

CHAPTER 121

EVIDENCE

1994-4

Except section 72 and the Third Schedule of this Act came into operation on 1st September, 1994 by Proclamation (S.I. 1994 No. 76).

Amended by:

1997-1
2001-2

2001-23
2005-3

2007-44

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1995

2002

2007

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 121

EVIDENCE
1994-4

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THE LAWS OF BARBADOS

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**BARBADOS**

EVIDENCE

1994-4

An Act to reform the law relating to evidence in proceedings in courts in Barbados and provide for related matters.

[Commencement: 1st September, 1994 Except section 72 and the Third Schedule]

PRELIMINARY

*Citation***Short title**

1. This Act may be cited as the *Evidence Act*.

*Interpretation***Definitions**

2. In this Act,
“admission” or “confession” means a previous representation made by a person who is or becomes a party to proceedings, being a representation that is adverse to the person’s interest in the outcome of the proceedings;

“attorney-at-law” has the meaning assigned to it by section 2 of the *Legal Profession Act*, Cap. 370A;

“carrier” has the meaning assigned to it by section 2 of the *Telecommunications Act*, Cap. 282B;
[2007-44]

“civil proceedings” means proceedings in a court, other than criminal proceedings;

“confidential communication” or “confidential record” means a communication made or record prepared in such circumstances that, at the time when it was made or prepared,

(a) the person who made or prepared it; or

(b) the person to whom it was made or for whom it was prepared

was under an expressed or implied obligation not to disclose its contents, whether or not the obligation arises under law;

“court” means the court, tribunal, judge, magistrate, arbitrator, body or person before whom or which proceedings are held or taken;

“credibility rule” shall be construed in accordance with section 91(1);

“criminal proceedings” means a prosecution in a court for an offence, and includes proceedings for the commitment of a person for trial for an offence;

“cross-examiner” means a party who is cross-examining a witness;

“document” includes

(a) anything on which there is writing;

(b) a map, plan, drawing or photograph; and

(c) any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently derived from the information so recorded or stored;

[2001-2]

“domestic telecommunications service” has the meaning assigned to it by section 2 of the *Telecommunications Act*, Cap. 282B;

[2007-44]

“evidence” includes unsworn evidence;

“hearsay rule” shall be construed in accordance with section 48(1);

“identification evidence”, in relation to criminal proceedings, means evidence that is

(a) an assertion by a person to the effect that an accused was, or resembles a person who was, present at or near a place where

(i) the offence for which the accused is being prosecuted was committed; or

(ii) an act that is connected with that offence was done,

at or about the time at which the offence was committed or the act was done, being an assertion that is based wholly or partly on what the first-mentioned person saw, heard or otherwise noticed at that place and time; or

(b) a report, whether oral or in writing, of an assertion as mentioned in paragraph (a);

“international telecommunications service” has the meaning assigned to it by section 2 of the *Telecommunications Act*, Cap. 282B;

[2007-44]

“investigating official” means a police officer or a person whose functions or duties include functions or duties in respect of the prevention or investigation of offences;

“Judge”, in relation to proceedings, means the Judge, Magistrate or other person before whom the proceedings are being held;

“leading question” means a question asked of a witness that

(a) directly or indirectly suggests a particular answer to the question; or

- (b) assumes the existence of a fact the existence of which is in dispute in the proceeding and as to the existence of which the witness has not given evidence before the question is asked;

“legal or administrative proceedings” means proceedings, however described,

- (a) in a court in Barbados or a court of a foreign country; or
(b) before a person or body, other than a court, authorised by law, including a law of a foreign country, or by consent of parties, to hear and receive evidence,

and includes proceedings in a coroner’s court and proceedings in a court martial;

“official questioning” means questioning by an investigating official in connection with the investigation of the commission or possible commission of an offence;

“opinion rule” shall be construed in accordance with section 64(1);

“person who is being prosecuted for a related offence”, in relation to an accused in criminal proceedings, means a person against whom a prosecution has been instituted, being a prosecution that has not been completed or terminated, for

- (a) an offence that arose in relation to the same events as those in relation to which the offence for which the accused is being prosecuted arose; or
(b) an offence that relates to or is connected with the offence for which the accused is being prosecuted;

“police officer” means a member of the Royal Barbados Police Force;

“previous representation” means a representation made otherwise than in the course of the giving of evidence in the proceedings in which evidence of the representation is sought to be adduced;

“prior consistent statement”, in relation to a witness, means a previous representation that is consistent with evidence given by the witness;

“probative value”, in relation to evidence, means the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue;

“public document” means a document that

- (a) forms part of the records of
 - (i) the Crown;
 - (ii) the government of a foreign country; or
 - (iii) a person or body holding office or exercising a power or function under or by virtue of the *Constitution* or of a law, whether of Barbados or of a foreign country; or
- (b) is being kept by or on behalf of the Crown, such a government or such a person or body;

and includes the records of the proceedings of the House of Assembly or Senate or the legislature of a foreign country;

“representation” includes an expressed or implied representation, whether oral or in writing, and a representation to be inferred from conduct;

“sworn evidence” means evidence given by a person who, before he or she gave it, had sworn or made an affirmation in accordance with this Act;

“telecommunications apparatus” has the meaning assigned to it by section 2 of the *Telecommunications Act*, Cap. 282B;

[2007-44]

“telecommunications service” has the meaning assigned to it by section 2 of the *Telecommunications Act*, Cap. 282B;

[2007-44]

“tendency rule” shall be construed in accordance with section 83;

“unsworn evidence” means evidence that is not sworn evidence.

References to business

- 3.(1) A reference in this Act to a business includes a reference to
- (a) a profession, calling, occupation, trade or undertaking;
 - (b) an activity engaged in or carried on by
 - (i) the Crown; or
 - (ii) the government of a foreign country;
 - (c) an activity engaged in or carried on by a person or body holding office or exercising power under or by virtue of the *Constitution* or of a law, whether of Barbados or of a foreign country, being an activity engaged in or carried on in the performance of the duties of the office or in the exercise of the power; and
 - (d) the proceedings of
 - (i) the House of Assembly or Senate; or
 - (ii) the legislature of a foreign country.
- (2) For the purposes of subsection (1), it does not matter whether or not
- (a) the business is engaged in or carried on for profit; or
 - (b) the business is engaged in or carried on outside Barbados.

References to examination in chief etc.

- 4.(1) A reference in this Act to
- (a) examination of a witness in chief is a reference to the questioning of a witness by the party who called the witness to give evidence, not being questioning that is re-examination;
 - (b) cross-examination of a witness is a reference to the questioning of a witness by a party other than the party who called the witness to give evidence;

- (c) re-examination of a witness is a reference to the questioning of a witness by the party who called the witness to give evidence, being questioning conducted after the cross-examination of the witness by some other party;

and “examine in chief”, “cross-examine” and “re-examine” have corresponding meanings.

- (2) Where a party has recalled a witness who has already given evidence, a reference in this Act to re-examination of a witness does not include a reference to questioning of the witness by that party before the witness is questioned by some other party.

References to civil penalties

5. For the purposes of this Act, a person shall be taken to be liable to a civil penalty if, in legal or administrative proceedings, not being criminal proceedings, the person would be liable to a penalty arising under a law of or in force in Barbados or a foreign country.

Unavailability of persons

- 6.(1) For the purposes of this Act, a person shall be taken not to be available to give evidence about a fact if

- (a) the person is dead;
- (b) the person is not competent to give the evidence about the fact;
- (c) it would not be lawful for the person to give evidence about the fact;
- (d) the evidence, under a provision of this Act, may not be given;
- (e) all reasonable steps have been taken to find the person or to secure his attendance, but without success; or
- (f) all reasonable steps have been taken to compel the person to give the evidence, but without success.

(2) In all cases other than those set out in subsection (1), the person shall be taken to be available to give evidence about the fact.

Unavail ability of documents

7.(1) For the purposes of this Act,

- (a) a document that cannot be found after reasonable inquiry and search shall be taken not to be available to a party; and
- (b) a document that has been destroyed shall be taken not to be available to a party if it was destroyed by the party, or by a person on behalf of the party, otherwise than in bad faith, or was destroyed by some other person.

(2) A document, other than a document referred to in subsection (1), shall be taken not to be available to a party if

- (a) it cannot be obtained by any judicial procedure of the court;
- (b) it is not in the possession or under the control of the party and is in the possession or under the control of some other party who knows or might reasonably be supposed to know that evidence of the contents of the document is likely to be relevant;
- (c) it is not in the possession or under the control of the party and, at a time when it was in the possession or under the control of some other party, that party knew or might reasonably be supposed to have known that evidence of the contents of the document was likely to be relevant; or
- (d) the contents of the document are not closely related to an issue that is important in the proceedings.

(3) In all cases other than those set out in subsection (2), the document shall be taken to be available to the party.

Representations in documents

8. For the purposes of this Act, where a representation is contained in a document that

- (a) was written, made, dictated or otherwise produced by a person; or
- (b) was recognised by a person as his or her representation by signing, initialling or otherwise marking the document,

the representation shall be taken to have been made by the person.

Witnesses

9. Unless the contrary intention appears,

- (a) a reference in this Act to a witness includes a reference to a party giving evidence; and
- (b) a reference in this Act to a witness who has been called by a party to give evidence includes a reference to the party giving evidence.

PART I**APPLICATION****Courts and proceedings to which Act applies**

10.(1) This Act applies to and in relation to all proceedings in a court in Barbados, including

- (a) proceedings that relate to bail;
- (b) interlocutory proceedings or proceedings of a like kind; or
- (c) proceedings heard in chambers.

(2) This Act does not apply to or in relation to

- (a) proceedings the hearing of which began before 1st September, 1994;

- (b) criminal proceedings in so far as those proceedings concern the determination of the penalty to be imposed in respect of an offence.

Parliamentary privilege

11. Parts II and III do not affect the law relating to the privileges of Parliament.

General powers of the court

12. The power of a court to control the conduct of proceedings is not, except as expressly or by necessary implication provided by this Act, affected by this Act.

PART II WITNESSES

Division 1

Competence and Compellability of witness

Competence and Compellability

- 13.** Except as otherwise provided in this Act,
- (a) every person is competent to give evidence; and
- (b) a person who is competent to give evidence about a fact is compellable to give that evidence.

Competence: lack of capacity

14.(1) Subject to section 15, a person who is incapable of understanding that, in giving evidence, he is under an obligation to give truthful evidence is not competent to give evidence.

-
- (2) A person who is incapable of giving a rational reply to a question about a fact is not competent to give evidence about the fact.
- (3) Where
- (a) a person is incapable of hearing or understanding, or of communicating a reply to, a question about a fact; and
 - (b) that incapacity cannot be overcome, or cannot be overcome without undue cost or undue delay, the person is not competent to give evidence about the fact.
- (4) Unless it appears otherwise, it shall be presumed that a person is not incompetent by reason of subsection (1), (2) or (3).
- (5) Evidence that has been given by a witness does not become inadmissible by reason only that, before the witness finishes giving evidence, he dies or ceases to be competent to give evidence.
- (6) For the purpose of determining a question arising under this section, the court may inform itself as the court thinks fit.

Evidence of children

15.(1) Where a child 7 years of age and under 14 years of age is presented as a witness in a proceeding, the court shall conduct an inquiry to determine if, in its opinion, the child is possessed of sufficient intelligence to justify the reception of his evidence, and to determine if he is competent to know the nature and consequences of giving false evidence and to know that it is wrong; and if the court so finds, it shall permit the child to give evidence upon taking the affirmation or oath.

- (2) Where a child who is
- (a) under 7 years of age; or
 - (b) 7 years of age and under 14 years of age, and who does not qualify as a witness under subsection (1),

is presented as a witness in a proceeding, the court shall conduct an inquiry to determine if in its opinion the child is possessed of sufficient intelligence to justify the reception of his evidence, and understands that he should tell the truth; and where the court so finds, it shall permit the child to give evidence upon stating

I promise to tell the truth.

(3) A person charged with an offence may be convicted upon evidence admitted under subsection (2); but in a trial by jury of a person so charged, the court shall warn the jury of the danger of acting on such evidence unless they find that the evidence is corroborated in some material particular by other evidence implicating that person.

(4) A child whose evidence has been received under subsection (2) is liable to be convicted of perjury in all respects as if he had given the evidence on oath.

(5) The evidence of a child, though not given upon oath but otherwise taken and reduced in writing as a deposition, shall be deemed to be a deposition to all intents and purposes.

(6) Nothing in this section limits or affects any rule of law that prevents a person from being convicted of an offence upon uncorroborated evidence.

Compellability: Sovereign, etc.

16.(1) The Sovereign, the Governor-General, a foreign Sovereign or the Head of State of a foreign country is not compellable to give evidence.

(2) A member of either House of Parliament is not compellable to give evidence if he would thereby be prevented from attending

(a) a sitting of the House of which he is a member, or a meeting of a committee of that House;

(b) a joint sitting of both Houses; or

(c) a meeting of a joint committee of both Houses.

[2007-44]

Competence and compellability: Judges and jurors

17.(1) A person who is acting as a Judge or juror in proceedings is not competent to give evidence in the proceedings.

(2) A person who is or was acting as a Judge in legal or administrative proceedings is not compellable to give evidence about the proceedings unless the court gives leave.

Competence and compellability: defendant, etc., in criminal proceedings

18.(1) This section applies only in criminal proceedings.

(2) An accused is not competent to give evidence as a witness for the prosecution.

(3) A person who is being prosecuted for a related offence

(a) is not compellable to give evidence; and

(b) except with the leave of the court, may not give evidence as a witness for the prosecution.

(4) Where it appears to the court that a witness called by the prosecutor may be a person who is being prosecuted for a related offence, the court shall satisfy itself (if there is a jury, in the absence of the jury) that the witness is aware of the effect of subsection (3).

(5) In determining whether to grant leave pursuant to subsection (3)(b), the matters that the court shall take into account include

(a) whether the person has or appears to have a motive to misrepresent a matter as to which the person is to give evidence; and

(b) whether the completion or termination of the prosecution before the person gives evidence is reasonably practicable.

Compellability of spouses, etc., in criminal proceedings

19.(1) This section applies only in criminal proceedings and subject to subsections (11) to (13) and to section 25 of the *Sexual Offences Act*, Cap. 154.

(2) A person who is the spouse, the *de facto* spouse, a parent or a child of an accused may object to being required to give evidence as a witness for the prosecution.

(3) A person who has a right of objection under subsection (2) may exercise that right either

(a) before that person gives evidence; or

(b) as soon as practicable after becoming aware that that person has that right,

whichever of those events later occurs.

[2007-44]

(4) A witness who is the spouse, the *de facto* spouse, a parent or a child of an accused may object to being required to give evidence of a communication made between the witness and that accused.

(5) Where it appears to the court that a witness may have a right to make an objection under subsection (2) or (4), the court shall inform the witness of his right to make the objection.

(6) If there is a jury, the court shall hear and determine the objection made pursuant to subsection (2) or (4) in the absence of the jury.

(7) Where, on an objection under subsection (2) or (4), the court finds that

(a) the likelihood of the harm that would or might be caused, whether directly or indirectly, by the witness giving evidence or giving evidence of the communication, as the case may be, to

(i) the person who made the objection; or

(ii) the relationship between that person and the defendant concerned;
and

(b) the nature and extent of any such harm,

outweigh the desirability of having the evidence given, the person shall not be required to give the evidence.

(8) For the purposes of subsection (7), the matters that the court shall take into account include

(a) the nature and gravity of the offence for which the accused is being prosecuted;

(b) the substance and importance of any evidence that the person might give and the weight that is likely to be attached to it;

(c) whether any other evidence concerning the matters to which the evidence of the witness would relate is reasonably available to the prosecutor;

(d) the nature of the relationship between the accused and the person; and

(e) whether, in giving the evidence, the witness would have to disclose matter that was received by the witness in confidence from the accused.

(9) Where, the objection has been determined, the prosecutor may not comment on the objection, on the decision of the court in relation to the objection or on the failure of the person to give evidence.

(10) In this section

(a) a reference to a child is a reference to a child of any age and includes a reference to an adopted child;

(b) a reference to a parent, in relation to a person, includes a reference to an adoptive parent of that person and, also includes a reference to the natural father of that person; and

(c) a reference to the *de facto* spouse of a person is a reference to a person of the opposite sex to the first-mentioned person who is living with the first-mentioned person as that person's husband or wife although they are not legally married to each other.

(11) The wife or husband of a person charged with an offence under any enactment mentioned in the *First Schedule* may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(12) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

(13) On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge or for a nuisance to any public highway, river or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only every defendant to such indictment or proceeding and the wife or husband of any such defendant shall be compellable to give evidence.

Compellability of spouses in civil proceedings

20. In civil proceedings, not being proceedings concerning the custody, guardianship or wardship of a child or proceedings for access to a child, a person is not compellable to give evidence of a communication between the person and his spouse or *de facto* spouse made during the marriage or while they lived together, as the case may be.

*Division 2**Sworn and Unsworn Evidence***Evidence of witnesses to be on oath or affirmation**

21.(1) Subject to this Division, a person may not give evidence, or act as an interpreter, in any proceedings unless the person has sworn an oath or made an affirmation in accordance with the appropriate form in the *Second Schedule*.

(2) It is for the person who is to give evidence to choose whether to swear an oath or make an affirmation.

(3) It is not necessary that a religious text be used in swearing an oath.

(4) The court may direct a person who is to give evidence to make an affirmation if

(a) the person refuses to choose whether to swear an oath or make an affirmation; or

(b) it is not reasonably practicable for the person to swear an appropriate oath.

(5) An oath is effective for the purposes of this section notwithstanding that the person who swore it

(a) did not have a religious belief or did not have a religious belief of a particular kind; or

(b) did not understand the nature and consequences of the oath.

(6) A person who is called merely to produce a document or object to the court need not swear an oath or make an affirmation before producing the document or objecting to the court.

Unsworn evidence in criminal proceedings

22.(1) In criminal proceedings, an accused may give unsworn evidence.

- (2) An accused who gives unsworn evidence may not also give sworn evidence unless there are special circumstances and the court gives leave.
- (3) In giving unsworn evidence, the accused may read from a statement in writing and may use notes.
- (4) After unsworn evidence has been given, the attorney-at-law may, with the leave of the court, direct the accused's attention to matters as to which the accused has not given unsworn evidence or as to which the accused might wish to give further unsworn evidence.
- (5) An accused who has given unsworn evidence shall not be cross-examined.
- (6) Unsworn evidence given by an accused may not be used for or against any other accused.
- (7) Subsections (5) and (6) do not apply where the accused gives both sworn and unsworn evidence.
- (8) Without affecting any other application
- (a) of the *Perjury Act*, Cap. 142; and
 - (b) of the offence of perverting the course of justice,

section 3 of that Act and the common law respecting the fabrication of false evidence apply in relation to unsworn evidence as they apply in relation to sworn evidence.

Comment on unsworn evidence

23.(1) In criminal proceedings, where an accused has given unsworn evidence and has not also given sworn evidence, the Judge or a party other than the prosecutor may comment on the fact that the accused did not give sworn evidence.

- (2) The comment referred to in subsection (1) shall not suggest that
- (a) the accused did not give sworn evidence, or did not offer himself for cross-examination, because he believed that he was guilty of the offence concerned; or
 - (b) unsworn evidence is, by reason only that it is unsworn evidence or that it was not subject to cross-examination, necessarily less persuasive than sworn evidence.

Court to advise witnesses

24.(1) Subject to subsection (2), before a witness gives evidence, the court shall inform the witness that he has a choice of swearing an oath or making an affirmation before giving evidence.

- (2) In criminal proceedings, before an accused gives evidence, the court shall inform the accused, if there is a jury, in the presence of the jury, that
- (a) he has a choice of swearing an oath or making an affirmation before giving evidence; and
 - (b) an accused in criminal proceedings need not swear an oath or make an affirmation before giving evidence, an accused in such proceedings who gives evidence without first having sworn an oath or made an affirmation may not also give sworn evidence without the leave of the court.

Division 3

Manner of giving evidence

General

Parties may question witness

25. Subject to this Division, a party may question any witness.

Examination-in-chief to be completed before other questioning

- 26.** Unless the court otherwise directs,
- (a) cross-examination of a witness shall not take place before the examination-in-chief of the witness; and
 - (b) re-examination of a witness shall not take place until all other parties who wish to do so have cross-examined the witness.

Manner and form of questioning witness

- 27.(1)** Subject to this Division or to the direction of the court, a party may question a witness in any way the party thinks fit.
- (2) Evidence may be given in whole or in part in narrative form and the court may direct that it be so given.

Interpreters

- 28.** A witness may give evidence about a fact through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand fully, and to make an adequate reply to questions that may be put about the fact.

Deaf and mute witnesses

- 29.(1)** A witness who cannot adequately hear may be questioned in any appropriate manner.
- (2) A witness who cannot adequately speak may give evidence by any appropriate means.

Attempts to refresh memory in court

- 30.(1)** A witness may not, in the course of giving evidence, use a document to try to refresh his memory about a fact without the leave of the court.

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- (2) The matters that the court shall take into account in determining whether to give leave include
- (a) whether the witness will be able to recall the fact adequately without using the document; and
 - (b) whether so much of the document as the witness proposes to use is, or is a copy of, a document that
 - (i) was written or made by the witness at a time when the events recorded in it were fresh in his memory, or
 - (ii) was, at such a time, found by the witness to be accurate.
- (3) Where a witness has, while giving evidence, used a document to try to refresh his memory about a fact, the witness may, with the leave of the court, read aloud, as part of his evidence, so much of the document as relates to that fact.
- (4) Where the court grants leave pursuant to subsection (1), the court shall, on the request of a party, give such directions as the court thinks fit to ensure that so much of the document as relates to the proceedings is produced to that party.

Attempts to refresh memory out of court

31.(1) The court may, if a party so requests, give such directions as are appropriate to ensure that specified documents and things used by a witness, otherwise than while giving evidence, to try to refresh his memory are produced to the party for the purposes of the proceedings.

(2) Where, without reasonable excuse, the directions referred to in subsection (1) have not been complied with, the court may refuse to admit the evidence given by the witness so far as the evidence concerns a fact in respect of which the witness tried to refresh his memory as mentioned in that subsection.

Direction not to extend to certain documents

32.(1) Where, by virtue of section 104, evidence of the contents of a document may not be adduced, the court shall not give a direction under section 31(1) to require the production of the document.

(2) Section 104 applies *mutatis mutandis* to this section.

Effect of calling for production of documents

33.(1) A party shall not be required to tender a document by reason only that the party, whether under this Act or otherwise, called for the document to be produced to the party or inspected it when it was so produced.

(2) Where a document called for as mentioned in subsection (1) has been produced or inspected and the party to whom it was produced or who inspected it has failed to tender it, the party who produced it is not for that reason entitled to tender it.

*Examination-in-chief and re-examination***Leading questions: examination-in-chief**

34. A leading question, other than a question that relates to a matter introductory to the evidence of the witness or to a matter that is not in dispute, shall not be put to a witness in examination-in-chief or in re-examination unless the court gives leave.

Hostile and unfavourable witnesses

35.(1) Where a witness gives evidence that is unfavourable to the party who called the witness, that party may, with the leave of the court, question the witness about that evidence as though the party were cross-examining the witness.

(2) Where, in examination-in-chief, a witness appears to the court not to be making a genuine attempt to give evidence about a matter of which the witness

may reasonably be supposed to have knowledge, the party who called the witness may, with the leave of the court, question the witness about that matter as though the party were cross-examining the witness.

(3) A party who is questioning a witness referred to in subsection (1) or (2) may also, with the leave of the court, question the witness about matters relevant only to the credibility of the witness, and such questioning shall be taken to be cross-examination for the purposes of this Act.

(4) Unless the court otherwise directs, questioning as mentioned in this section shall take place before the other parties cross-examine the witness.

(5) The court may direct the order in which the parties may question the witness.

(6) The matters that the court shall take into account in determining whether to give leave, or give a direction, under this section include

- (a) whether the party gave notice at the earliest opportunity of his intention to seek leave; and
- (b) the matters on which, and the extent to which, the witness has been, or is likely to be, questioned by some other party.

Limits on re-examination

36. On re-examination, a witness may be questioned as to matters arising out of or related to evidence given by the witness in cross-examination and other questions may not be put to the witness without the leave of the court.

Cross-examination

Witness called in error

37. A party may not cross-examine a witness who has been called in error by some other party and has not been questioned by that other party about a matter relevant to a question to be determined in the proceedings.

Improper questions

38.(1) If a misleading question, or a question that is unduly annoying, harassing, intimidating, offensive, oppressive or repetitive, is put to a witness in cross-examination, the court may disallow the question or inform the witness that he need not answer the question.

(2) For the purposes of subsection (1), the matters that the court shall take into account include any relevant condition or characteristic of the witness, including

- (a) his age, personality and education; and
- (b) any mental, intellectual or physical disability to which the witness is or appears to be subject.

Leading questions: cross-examination

39.(1) A party may put a leading question to a witness in cross-examination but the court may disallow the question or direct the witness not to answer it.

(2) In determining whether to disallow the question or give such a direction, the matters that the court shall take into account include the extent to which

- (a) evidence that has been given by the witness in examination-in-chief is unfavourable to the party who called the witness;
- (b) the witness has an interest consistent with an interest of the cross-examiner;
- (c) the witness is sympathetic to that party, either generally or in relation to a particular matter; and
- (d) the facts will be better ascertained if leading questions are not used.

(3) Subsection (1) does not limit the power of the court to control leading questions.

Prior inconsistent statements of witness

40.(1) It is not necessary that complete particulars of a prior inconsistent statement alleged to have been made by a witness be given to the witness, or that a document that contains a record of the statement be shown to the witness, before the witness may be cross-examined about the statement.

(2) Where, in cross-examination, a witness does not admit that he has made a prior inconsistent statement, the party who cross-examined the witness may not adduce evidence of the statement otherwise than from the witness unless, in the cross-examination, that party

- (a) gave the witness such particulars of the statement as are reasonably necessary to enable the witness to identify the statement; and
- (b) drew the attention of the witness to so much of the statement as is inconsistent with the evidence of the witness.

(3) For the purposes of adducing that evidence, the party may re-open the party's case.

Previous representations of other persons

41.(1) Except as provided by this section, a cross-examiner may not, in cross-examination of a witness, use a previous representation alleged to have been made by a person other than the witness.

(2) Where evidence of such a representation has been admitted or the court is satisfied that it will be admitted, the cross-examiner may question the witness about it and its contents.

(3) Where

- (a) a representation referred to in subsection (2) is recorded in a document; and
- (b) evidence of the representation has not been admitted and the court is not satisfied that, if it were to be adduced, it would be admitted,

the document may only be used in the circumstances set out in subsection (4).

- (4) The circumstances referred to in subsection (3) are as follows:
- (a) that the document may be produced to the witness;
 - (b) that the witness may be asked whether, having examined the contents of the document, he adheres to the evidence that he has given; and
 - (c) that neither the cross-examiner nor the witness shall identify the document or disclose its contents.
- (5) A document used as mentioned in subsection (4) may be marked for identification.

Production of documents

42.(1) Where a cross-examiner

- (a) is cross-examining or has cross-examined a witness about a prior inconsistent statement alleged to have been made by the witness; or
- (b) in cross-examination of a witness, is using or has used a previous representation alleged to have been made by some other person,

being a statement or representation that is recorded in a document, the cross-examiner shall, if the court so orders or if some other party so requires, produce the document, or such evidence of the contents of the document as is available to the cross-examiner, to the court or to that other party.

- (2) Where a document or evidence has been produced in accordance with subsection (1), the court may
- (a) examine it;
 - (b) give directions as to its use; and
 - (c) subject to this Act, admit it notwithstanding that it has not been tendered by a party.

(3) A cross-examiner shall not, by reason only of having produced a document to a witness who is being cross-examined, be required to tender the document.

Certain matters to be put to witness

43. Where a party adduces evidence

- (a) that contradicts evidence already given in examination-in-chief by a witness called by some other party; or
- (b) about a matter as to which a witness who has already been called by some other party was able to give evidence in examination-in-chief,

and the evidence adduced has been admitted, the court may, if the first-mentioned party did not cross-examine the witness about the matter to which the evidence relates, give leave to the party who called the witness to re-call the witness to be questioned about the matter.

PART III

ADMISSION OF EVIDENCE: RELEVANCE RULE

Relevant evidence

44.(1) The evidence that is relevant in proceedings is evidence that, if it were accepted, could rationally affect, whether directly or indirectly, the assessment of the probability of the existence of a fact in issue in the proceedings.

(2) In particular, evidence shall not be taken to be irrelevant by reason only that it relates to

- (a) the credibility of a party or a witness;
- (b) the admissibility of other evidence; or
- (c) a failure to adduce evidence.

Relevant evidence to be admissible

45.(1) Evidence that is relevant in proceedings is, subject to this Act, admissible, and shall be admitted, in the proceedings; and evidence that is not relevant in the proceedings is not so admissible.

Provisional relevance

46.(1) Where the determination of the question whether evidence adduced by a party is relevant depends on the court's making some other finding including a finding that the evidence is what the party claims it to be, the court may find that the evidence is relevant

- (a) if it is reasonably open to make that finding; or
- (b) subject to further evidence being admitted such that, at some later stage of the proceedings, it will be reasonably open to make that finding.

(2) Without limiting subsection (1), where the relevance of evidence of an act done by a person depends on the court making a finding that the person and one or more other persons had a common purpose to effect an unlawful conspiracy, the court may use the evidence itself in determining whether such a common purpose existed.

Inferences as to relevance

47.(1) Where a question arises as to the relevance of a document or thing, the court may examine the document or thing and may draw any reasonable inference from it, including an inference as to its authenticity or identity.

(2) Subsection (1) does not limit the matters from which inferences may properly be drawn.

PART IV
ADMISSION AND USE OF EVIDENCE: EXCLUSIONARY RULES

Division 1

Hearsay Evidence

The hearsay rule

Exclusion of hearsay evidence

48.(1) Evidence of a previous representation is not admissible to prove the existence of a fact, in this Division referred to as an “asserted fact”, intended by the person who made the representation to be asserted by the representation.

(2) Where evidence of a previous representation is relevant other-wise than as mentioned in subsection (1), that subsection does not prevent the use of the evidence to prove the existence of an asserted fact.

“First-hand” hearsay

Restriction to “first-hand” hearsay

49. A reference in this Division to a previous representation is a reference to a previous representation that was made by a person whose knowledge of the asserted fact, in this Division referred to as “personal knowledge”, was or might reasonably be supposed to have been based on what the person saw, heard or otherwise perceived, other than a previous representation made by some other person about the asserted fact.

Exception: civil proceedings where maker not available

50. In civil proceedings, where the person who made a previous representation is not available to give evidence about an asserted fact, the hearsay rule does not apply in relation to

- (a) oral evidence of the representation that is given by a person who saw, heard or otherwise perceived the making of the representation; or
- (b) a document so far as it contains the representation or some other representation to which it is reasonably necessary to refer in order to understand the representation.

Exception: civil proceedings where maker available

51.(1) This section applies in civil proceedings where the person who made a previous representation is available to give evidence about an asserted fact.

(2) Where it would cause undue expense or undue delay, or would not be reasonably practicable, to call the person referred to in subsection (1) to give evidence, the hearsay rule does not apply in relation to

- (a) oral evidence of the previous representation referred to in subsection (1) given by a person who saw, heard or otherwise perceived the making of the representation; or
- (b) a document so far as it contains the previous representation or some other representation to which it is reasonably necessary to refer to understand the previous representation.

(3) Where the person referred to in subsection (1) has been or is to be called to give evidence, the hearsay rule does not apply in relation to evidence of the representation that is given by

- (a) that person, or
- (b) a person who saw, heard or otherwise perceived the making of the representation,

if, at the time when the representation was made, the occurrence of the asserted fact was fresh in the memory of the person who made the representation.

(4) Where subsection (3) applies in relation to a representation, a document containing the representation shall not, unless the court gives leave, be tendered before the conclusion of the examination-in-chief of the person who made the representation.

Exception: criminal proceedings where maker not available

52.(1) This section applies in criminal proceedings where the person who made a previous representation is not available to give evidence about an asserted fact.

(2) The hearsay rule does not apply in relation to evidence of a previous representation that is given by a witness who saw, heard or otherwise perceived the making of the representation, being a representation that was

- (a) made under a duty to make that representation or to make representations of that kind;
- (b) made at or shortly after the time when the asserted fact occurred and in circumstances that make it unlikely that the representation is a fabrication;
- (c) made in the course of giving sworn evidence in a legal or administrative proceeding if the defendant, in that proceeding, cross-examined the person who made the representation, or had a reasonable opportunity to cross-examine that person, about it; or
- (d) against the interests of the person who made it at the time when it was made.

(3) For the purposes of subsection (2)(c), a defendant who was not present at a time when the cross-examination of a person might have been conducted but could reasonably have been present at that time may be taken to have had a reasonable opportunity to cross-examine the person.

(4) If a representation

- (a) tends to damage the reputation of the person who made it;
- (b) tends to show that that person has committed an offence; or
- (c) tends to show that that person is liable in an action for damages,

then, for the purposes of subsection (2)(d), the representation shall be taken to be against the interests of the person who made it.

(5) The hearsay rule does not prevent the admission or use of evidence of a previous representation adduced by a defendant, being evidence that is given by a witness who saw, heard or otherwise perceived the making of the representation.

(6) Where evidence of a previous representation about a matter has been adduced by a defendant and has been admitted, the hearsay rule does not apply in relation to evidence of a previous representation about the matter adduced by some other party, being evidence given by a witness who saw, heard or otherwise perceive the making of the second-mentioned representation.

Exception: criminal proceedings where maker available

53.(1) Where the conditions specified in subsection (2) exist then, in criminal proceedings, if the person who made a previous representation is available to give evidence about an asserted fact, the hearsay rule does not apply in relation to evidence of the previous representation that is given by

- (a) that person; or
- (b) a person who saw, heard or otherwise perceived the representation being made.

(2) The conditions referred to in subsection (1) are

- (a) that at the time when the representation was made, the occurrence of the asserted fact was fresh in the memory of the person who made the representation; and

- (b) that the person who made the representation has been or is to be called to give evidence in the proceeding.
- (3) Subsections (1) and (2) do not apply in relation to evidence adduced by the prosecutor of a representation that was made for the purpose of indicating the evidence that the person who made it would be able to give in legal or administrative proceedings.
- (4) Where subsections (1) and (2) apply in relation to a representation, a document containing the representation shall not, unless the court gives leave, be tendered before the conclusion of the examination in chief of the person who made the representation.

Notice to be given

- 54.(1)** Subject to this section, sections 50, 51(2) and 52(2) and (5) do not apply in relation to evidence adduced by a party unless that party has given notice in writing, in accordance with the regulations, to each other party of the intention to adduce the evidence.
- (2) Where a notice required by subsection (1) has not been given, the court may, on the application of a party and subject to conditions, direct that one or more of those provisions is to apply
- (a) notwithstanding the failure of the party to give such notice; or
- (b) in relation to specified evidence with such modifications as the court specifies.
- (3) In civil proceedings, where the writing by which notice is given discloses that it is not intended to call the person who made the previous representation concerned on a ground referred to in section 51(2), a party may, not later than 7 days after notice has been given, by notice in writing given to each other party, object to the tender of the evidence, or of a specified part of the evidence.
- (4) The notice shall set out the grounds on which the objection is based.

- (5) The court may determine the objection on the application of a party made at or before the hearing.
- (6) If the objection is unreasonable, the court may order that the party objecting shall, in any event, bear the costs, ascertained on an attorney-at-law and client basis, incurred by another party
- (a) in relation to the objection; and
 - (b) in calling the person who made the representation to give evidence.

Records, Expert Reports, Labels and Telecommunications

Exception: documentary records

55.(1) Subject to subsection (2), a statement in a document is admissible in any proceedings as evidence of any fact stated therein of which direct oral evidence would be admissible if

- (a) the document is or forms part of a record compiled by a person acting under a duty, from information supplied by another person (whether the other person was acting under a duty or not) who had, or may reasonably supposed to have had, personal knowledge of the matters dealt with in that information; and
 - (b) any condition set out in subsection (2) is satisfied.
- (2) The conditions mentioned in subsection (1)(b) are
- (a) that the person who supplied the information
 - (i) is dead or by reason of his bodily or mental condition unfit to attend as a witness,
 - (ii) is outside Barbados and it is not reasonably practicable to secure his attendance, or
 - (iii) cannot reasonably be expected, having regard to the time that has elapsed since he supplied or acquired the information and to all

the circumstances, to have any recollection of the matters dealt with in that information;

- (b) that all reasonable steps have been taken to identify the person who supplied the information but that he cannot be identified; and
 - (c) that, the identity of the person who supplied the information being known, all reasonable steps have been taken to find him but that he cannot be found.
- (3) Nothing in this section affects the admissibility of any evidence that would be admissible apart from this section.

Application of section 55

56.(1) Section 55(1) applies whether the information contained in the document was supplied directly, or, subject to subsection (2), indirectly.

(2) Where information referred to in subsection (1) was supplied indirectly, section 55(1) only applies if each person through whom the information was supplied was acting under a duty.

(3) Information referred to in subsection (1) also applies where the person compiling the record is himself the person by whom the information was supplied.

(4) Where a document referred to in subsection (1) contains evidence that a person, if called as a witness, could be expected to give has been prepared for the purpose of any pending or contemplated proceedings, a statement contained in the document shall not be given in evidence without leave of the court.

(5) The court shall not give leave to admit a statement referred to in subsection (4) unless the court is of the opinion that the statement ought to be admitted in the interest of justice having regard to

- (a) the circumstances in which leave is sought and, in particular, to the contacts of the statement; and

- (b) the likelihood that the accused will be prejudiced by the admission of the statement in the absence of the person who supplied the information on which the statement is based.
- (6) Where in any proceedings a statement based on information supplied by any person is given in evidence by virtue of section 55
- (a) any evidence which, if the person had been called as a witness, would have been admissible as relevant to his credibility as a witness is admissible for that purpose in those proceedings;
- (b) evidence may, with the leave of the court, be given of any matter which if the person had been called as a witness, would have put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examination party; and
- (c) evidence tending to prove that the person, whether before or after supplying the information, made a statement, whether oral or not, that is inconsistent with the information is admissible for the purpose of showing that the person has contradicted himself.
- (7) A statement that is admissible by virtue of section 55 is not capable of corroborating evidence given by the person who supplied the information on which the statement is based.
- (8) In deciding for the purposes of section 55(2)(a)(i) whether a person is unfit to attend as a witness the court may act on a certificate purporting to be signed by a registered medical practitioner.
- (9) Any reference in section 55 or this Part to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.
- (10) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 55 regard shall be had to all the circumstances

from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular

- (a) to the question whether or not the person who supplied the information from which the record containing the statement was compiled did do contemporaneously with the occurrence or existence of the facts dealt with in that information; and
- (b) to the question whether or not that person, or any other person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

Identification of document

57.(1) In any proceedings where it is desired to give a statement in evidence in accordance with section 125, a certificate

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a machine;
- (c) dealing with any of the matters mentioned in subsection (1) of section 125; and
- (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the device or process

shall be evidence of anything stated in it; and for the purposes of this section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(2) Notwithstanding subsection (1), a court may require oral evidence to be given of anything of which evidence could be given by a certificate under that subsection.

(3) Any person who in a certificate tendered under subsection (1) in a court, makes a statement which he knows to be false or does not believe to be true is guilty of an offence and liable

- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both;
- (b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine.

(4) In estimating the weight, if any, to be attached to a statement regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular

- (a) to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant device or process, or recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information; and
- (b) to the question whether or not any person concerned with the supply of information to that device or process, or with the operation of that device or process or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

(5) For the purposes of subsection (4) information shall be taken to be supplied to a device or process whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment.

Proof of statement admitted under section 55 or 124

58.(1) Where in any proceedings a statement contained in a document is admissible in evidence by virtue of section 55 or in accordance with 124 it may be proved

- (a) by the production of that document; or

- (b) (whether or not that document is still in existence) by the production of a copy of that document, or of the material part of it, authenticated in such manner as the court may approve.
- (2) For the purpose of deciding whether or not a statement is admissible the court may draw any reasonable inference
- (a) from the circumstances in which the statement was made or otherwise came into being; or
 - (b) from any other circumstances, including the form and contents of the document in which the statement is contained.
- (3) Provision may be made by rules of court for supplementing sections 55 and 124.

Exception: expert reports

- 59.(1)** An expert report is admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.
- (2) Where it is proposed that the person making an expert report shall not give oral evidence, the report may only be admitted in evidence with the leave of the court.
- (3) For the purpose of determining whether to give leave for the admission in evidence of an expert report the court shall have regard to
- (a) the contents of the report;
 - (b) the reasons why it is proposed that the person making the report shall not give oral evidence;
 - (c) any risk, in particular, the probability that statements in the report may be controverted if the person making the report does not attend to give oral evidence in the proceedings, that its admissions or exclusion would

result in unfairness to the accused or, if there is more than one accused to any of them; and

(d) to any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making the report could have given oral evidence.

(5) In this Act “expert report” means a written report by a person dealing wholly or mainly with matters on which he is (or would if living) be qualified to give expert evidence.

Exception: contents of tags, labels, etc.

60. Where a document has been attached to an object or writing has been placed on a document or object, being a document or writing that may reasonably be supposed to have been so attached or placed in the course of a business, the hearsay rule does not prevent the admission of or use of the document or writing.

Exception: telecommunications

61.(1) Where a document has been

- (a) produced by a telecommunications apparatus; or
- (b) received from a carrier providing an international telecommunications service,

being a document that records a message that has been transmitted by means of a telecommunications service, the hearsay rule does not prevent the admission or use of a representation in the document as to the matters specified in subsection (2).

(2) The matters referred to in subsection (1) are

- (a) the identity of the person from whom or on whose behalf the message was sent;
- (b) the date on which, the time at which or the place from which the message was sent;

- (c) the identity of the person to whom the message was addressed.

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Exception: reputation as to certain matters

62.(1) The hearsay rules does not prevent the admission or use of evidence of

- (a) reputation that a man and a woman cohabiting at a particular time were married to each other at that time;
- (b) reputation as to family history or a family relationship; or
- (c) reputation as to the existence, nature or extent of a public or general right.

(2) In criminal proceedings, subsection (1) does not apply in relation to evidence adduced by the prosecutor, but, where evidence as mentioned in subsection (1) has been admitted, this subsection does not prevent the admission or use of evidence that tends to contradict it.

Exceptions: interlocutory proceedings

63. The hearsay rule does not prevent the admission or use of evidence adduced in interlocutory proceedings if the party who adduces it also adduces evidence of its source.

[2007-44]

Division 2

Opinion Evidence

Exclusion of opinion evidence

64.(1) Evidence of an opinion is not admissible to prove the existence of a fact as to the existence of which the opinion was expressed.

(2) Where evidence of an opinion is relevant otherwise than as mentioned in subsection (1), that subsection does not prevent the use of the evidence to prove the existence of a fact as to the existence of which the opinion was expressed.

Exception: lay opinions

65. Where

- (a) an opinion expressed by a person is based on what the person saw, heard or otherwise noticed about a matter or event; and
- (b) evidence of the opinion is necessary to obtain an adequate account of the person's perception of the matter or event,

the opinion rule does not prevent the admission or use of the evidence.

Exception: opinions based on specialised knowledge

66. Where a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not prevent the admission or use of evidence of an opinion of that person that is wholly or substantially based on that knowledge.

Ultimate issue and common knowledge rules abolished

67. Evidence of an opinion is not inadmissible by reason only that it is about

- (a) a fact in issue; or
- (b) a matter of common knowledge.

*Division 3**Admissions or Confessions***Interpretation: sound recording**

68. A reference in this Division to a “sound recording” includes a reference to a recording of visual images and sounds.

Hearsay and opinion rules: exception for admissions

69.(1) The hearsay rule and the opinion rule do not prevent the admission or use of

- (a) evidence of an admission; or
- (b) evidence of a previous representation made in relation to an admission at the time when the admission was made or shortly before or shortly after that time, being a representation to which it is reasonably necessary to refer to understand the admission.

(2) Subject to subsection (3), where, by reason only of the operation of subsection (1), the hearsay rule and the opinion rule do not prevent the admission or use of evidence of an admission or of a previous representation as mentioned in subsection (1) (b), the evidence may, if admitted, be used only in relation to the case of the party who made the admission concerned and the case of the party who adduced the evidence.

(3) The evidence may be used in relation to the case of some other party if that other party consents but consent may not be given in respect of part only of the evidence.

Exclusion of admissions influenced by violence, etc.

70. Evidence of an admission is not admissible unless the court is satisfied that the admission, and the making of the admission, were not influenced by violent, oppressive, inhuman or degrading conduct, whether towards the person who made the admissions towards some other person, or by a threat of conduct

of that kind, or by any promise made to the person who made the admission to any other person.

Criminal proceedings: reliability of confession by accused

71.(1) This section applies only in criminal proceedings and only in relation to evidence of a confession made by an accused.

(2) Evidence of a confession is not admissible unless the circumstances in which the confession was made were such as to make it unlikely that the truth of the confession was adversely affected.

(3) For the purposes of subsection (2), evidence that the confession is true or untrue is not relevant.

(4) For the purposes of subsection (2), the matters that the court shall take into account include

- (a) any relevant condition or characteristic of the person who made the confession, including the age, personality and education of the person and any mental, intellectual or physical disability to which the person is or appears to be subject; and
- (b) if the confession was made in response to questioning
 - (i) the nature of the questions and the manner in which they were put, and
 - (ii) the nature of any threat, promise or representation made to the person questioned.

Criminal proceedings: admissions by suspects

72.(1) This section applies only

- (a) in criminal proceedings;
- (b) in relation to evidence of a confession or admission made by an accused who, at the time when the confession or admission was made, was or

-
- ought reasonably to have been suspected by an investigating official of having committed an offence; and
- (c) where the confession or admission was made in the course of official questioning.
- (2) Evidence of the confession or admission is not admissible unless,
- (a) if the confession or admission was made in circumstances where it was reasonably practicable to tape-record the confession or admission, the questioning of the person and anything said by that person during that questioning were tape-recorded;
- (b) in any other case,
- (i) at the time of the questioning, or as soon as practicable after the questioning, a record in writing was made, either in English or in another language used by the person questioned, of the things said by or to the person in the course of the questioning;
- (ii) as soon as practicable after that record was made the record was read to the person questioned in the language used by that person during the questioning, and a copy made available to him;
- (iii) the person questioned was given the opportunity to interrupt the reading referred to in sub-paragraph (ii) at any time for the purpose of drawing attention to any error in or omission from the record, and at the end of the reading the person was also given the opportunity to state whether there were any errors in or omissions from the record in addition to any to which he had drawn attention in the course of the reading;
- (iv) a tape-recording was made of the reading referred to in sub-paragraph (ii) and of everything said by or to the person questioned as a result of compliance with subparagraph (iii); and the requirements of sub-paragraph (ii) were also observed in respect of that tape-recording;

- (v) before the reading referred to in sub-paragraph (ii) was commenced, an explanation in accordance with the form in the *Third Schedule* was given to the person questioned of the procedure that would be followed for the purpose of compliance with sub-paragraphs (ii), (iii) and (iv);
- (vi) the questioning was conducted, and the confession or admission made, in the presence of a person, not being an investigating official, who
 - (A) was an attorney-at-law acting for the person questioned; or
 - (B) if no such attorney-at-law was reasonably available, had been chosen by the person questioned; and
- (c) a document, not being a sound recording or a transcript of a sound recording, prepared by or on behalf of the investigating official had been signed, initialled or otherwise marked by the person questioned and by the attorney-at-law or other chosen person, if any, present at the questioning acknowledging that the document was a true record of every question, representation or response asked, made or given during the questioning.

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- (3) Where a confession or admission has been made in accordance with the requirements of subsection (2), the investigating official shall, without charge,
 - (a) if the recording is an audio recording only or a video recording only, make the recording or a copy of it available to the person questioned or his legal representative within 7 days after the making of the recording;
[2007-44]
 - (b) if both an audio recording and a video recording were made, make the audio recording or a copy of it available to the person questioned or his legal representative within 7 days after the making of the recording, and notify the person or his or her legal representative that an

opportunity will be provided, on request, for viewing the video recording;

[2007-44]

- (c) if a transcript of the tape recording is prepared, make a copy of the transcript available to the person questioned or his legal representative within 7 days after the preparation of the transcript; and

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- (d) if a document is prepared, signed, initialled or otherwise marked as a true record of any question, representation or response asked, made or given during the questioning, make a copy of the document available to the person questioned or his legal representative within 7 days of the preparation of the document.

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[2007-44]

(4) A court may admit evidence to which this section applies even if the requirements of this section have not been complied with, or there is insufficient evidence of compliance with those requirements, if, having regard to the nature of and the reasons for the non-compliance or insufficiency of evidence and any other relevant matters, the court is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.

(5) A court may admit evidence to which this section applies even if a provision of subsection (2) has not been complied with if, having regard to the reasons for the non-compliance and any other relevant matters, the court is satisfied that it was not practicable to comply with that provision.

(6) If a Judge permits evidence to be given before a jury under subsection (4) or (5), the Judge shall inform the jury of the non-compliance with the requirements of this section, or of the absence of sufficient evidence of compliance with those requirements, and give the jury such warning about the evidence as the Judge thinks appropriate in the circumstances.

[This section is not in force. S.I. 1994/76.]

[2007-44]

Exclusion of records of oral questioning

73.(1) Where an oral admission was made by a defendant to an investigating official in response to a question put or a representation made by the official, a document prepared by or on behalf of the official is not admissible in criminal proceedings to prove the contents of the question, representation or response unless the defendant has, by signing, initialling or otherwise marking the document, acknowledged that the document is a true record of the question, representation or response.

(2) In subsection (1), “document” does not include a sound recording or a transcript of a sound recording.

Admissions made with authority

74.(1) Where it is reasonably open to find that

- (a) at the time when a previous representation was made, the person who made it had authority to make statements on behalf of a party in relation to the matter with respect to which the representation was made;
- (b) at the time when a previous representation was made, the person who made it
 - (i) was an employee of a party; or
 - (ii) had authority otherwise to act for a party, and the representation related to a matter within the scope of the person’s employment or authority; or
- (c) a previous representation was made by a person in furtherance of a common purpose, whether lawful or not, that the person had with a party or with a party and one or more other persons,

the representation shall, for the purpose only of determining whether it is to be taken to be an admission, be taken to have been made by the party.

(2) For the purposes of the application of subsection (1), the hearsay rule does not prevent the admission or use of a previous representation made by a person that tends to prove

- (a) that the person
 - (i) was an employee of a party; or
 - (ii) had authority to act for a party,
- (b) the scope of the person's employment or authority; or
- (c) the existence at any time of a common purpose.

Proof of making of admission

75. Where it is reasonably open to find that a particular person made a previous representation, the court shall, for the purpose of determining whether evidence of the representation is admissible, find that the person made the representation.

Evidence of silence

76.(1) An inference unfavourable to a party shall not be drawn from evidence that the party or another person failed or refused to answer a question, or to respond to a representation, put or made to the party or other person in the course of official questioning.

(2) Subject to subsection (3), if evidence referred to in subsection (1) can only be used to draw an inference unfavourable to a party, the evidence is not admissible.

(3) Subsection (1) does not prevent the use of the evidence to prove that the person failed or refused to answer a question or to respond to a representation if the failure or refusal is a fact in issue in the proceedings.

(4) In this section, "inference" includes

- (a) an inference of consciousness of guilt; or

(b) an inference relevant to a party's credibility.

[2007-44]

Discretion to exclude confessions

77. In criminal proceedings, where evidence of confession is adduced by the prosecution and, having regard to the circumstances in which the confession was made, it would be unfair to an accused to use the evidence, the court may

- (a) refuse to admit the evidence; or
- (b) refuse to admit the evidence to prove a particular fact.

[2007-44]

Division 4

Evidence of Judgments and Convictions

Exclusion of evidence of judgments and convictions

78.(1) Evidence of the decision in legal or administrative proceedings is not admissible to prove the existence of a fact that was in issue in the legal or administrative proceedings.

(2) Where evidence of a decision referred to in subsection (1) is relevant otherwise than as mentioned in that subsection, it may not be used for the purpose mentioned in that subsection.

Exceptions

79.(1) Section 78 (1) does not prevent the admission or use of evidence of the grant of probate, letters of administration or like order of a court to prove

- (a) the death or date of death of the person concerned; or
- (b) the due execution of the testamentary document concerned.

(2) In civil proceedings, section 78(1) does not prevent the admission or use of evidence that a party, or a person through or under whom a party claims, has been convicted of an offence, not being a conviction

- (a) in respect of which a review or appeal, however described, has been instituted but not finally determined;
- (b) that has been quashed or set aside; or
- (c) in respect of which a pardon has been given.

(3) Where by virtue of subsection (1) or (2) section 78(1) does not prevent the admission or use of evidence, the hearsay rule and the opinion rule do not prevent the admission or use of that evidence.

Savings

80. Sections 78 and 79 do not affect the operation of

- (a) a law that relates to the admissibility or effect of evidence of a conviction tendered in proceedings, including criminal proceedings for defamation;
- (b) a judgment in *rem*; or
- (c) the law relating to *res judicata* or issue estoppel.

Division 5

Evidence of Conduct and Character relevant to issues

Preliminary

Application

81.(1) This Division does not apply in relation to evidence that relates only to the credibility of a witness.

(2) This Division does not apply so far as proceedings relate to bail.

(3) This Division does not apply in relation to evidence of the character, reputation or conduct of a person, or in relation to evidence of a tendency that a person has or had, if that character, reputation, conduct or tendency, respectively, is a fact in issue.

Use of evidence for other purposes

82. Where evidence that, under a provision of this Division, is not admissible to prove a particular matter is relevant otherwise than as mentioned in that provision, the evidence may not be used to prove that matter.

Tendency Evidence

Exclusion: of tendency evidence

83. Evidence of the character, reputation or conduct of a person, or of a tendency that a person has had, is not admissible to prove that a person has or had a tendency, whether because of the person's character or otherwise, to act in a particular way or to have a particular state of mind.

Conduct Evidence

Exception: Conduct to proven tendency

84. Where there is a question whether a person did a particular act or had a particular state of mind and it is reasonably open to find that

- (a) the person did some other particular act or had some other particular state of mind, respectively; and
- (b) all the acts or states of mind, respectively, and the circumstances in which they were done or existed, are substantially and relevantly similar,

the tendency rule does not prevent the admission or use of evidence that the person did the other act or had the other state of mind, respectively.

**Exclusion of evidence of conduct to prove improbability of co-
incidence**

85. Evidence that two or more events occurred is not admissible to prove that, because of the improbability of the events occurring coincidentally, a person did a particular act or had a particular state of mind unless it is reasonably open to find that

- (a) the events occurred and the person could have been responsible for them; and
- (b) all the events, and the circumstances in which they occurred, are substantially and relevantly similar.

Further protections: prosecution evidence of conduct of accused

86.(1) This section applies in relation to evidence in criminal proceedings adduced by the prosecutor and so applies in addition to sections 84 and 85.

(2) Evidence that the accused did or could have done an act or had or could have had a particular state of mind, being an act or state of mind that is similar to an act or state of mind the doing or existence of which is a fact in issue, is not admissible unless

- (a) the existence of that fact in issue is substantially in dispute in the proceedings; and
- (b) the evidence has substantial probative value.

(3) In determining whether evidence referred to in subsection (1) has substantial probative value, the court shall have regard to, *inter alia*, the following matters

- (a) the nature and extent of the similarity;
- (b) the extent to which the act or state of mind to which the evidence relates is unusual;

- (c) in the case of evidence of a state of mind, the extent to which the state of mind is unusual or occurs infrequently; and
- (d) in the case of evidence of an act,
 - (i) the likelihood that the defendant would have repeated the act;
 - (ii) the number of times on which similar acts have been done; and
 - (iii) the period that has elapsed between the time when the act was done and the time when the defendant is alleged to have done the act that the evidence is adduced to prove.

Notice to be given

87.(1) Subject to subsection (2),

- (a) section 84 does not apply in relation to evidence adduced by a party; and
 - (b) evidence adduced by a party to which section 86 applies is not admissible, unless that party has given notice in writing in accordance with the regulations to each other party of the intention to adduce the evidence.
- (2) The court may, on the application of a party and subject to conditions, direct that section 84 or 85, or both, is or are to apply
- (a) notwithstanding the failure of the party to give such notice; or
 - (b) in relation to specified evidence, with such modifications as the court specifies.

Character Evidence**Exception: character of accused**

88.(1) This section applies in criminal proceedings.

(2) The hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence adduced by an accused that tends to prove that the accused is, either generally or in a particular respect, a person of good character.

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(3) Where evidence that tends to prove that the accused is generally a person of good character and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character.

(4) Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character in the respect.

Exception: character of co-accused

89.(1) In criminal proceedings, the hearsay rule and tendency rule do not prevent the admission or use of evidence of an opinion about an accused adduced by some other accused

(a) the person whose opinion it is has specialised knowledge based on the person's training, study or experience; and

(b) the opinion is wholly or substantially based on that knowledge.

(2) Where evidence of an opinion as mentioned in subsection (1) has been admitted, the hearsay rule, the opinion rule and the tendency rule do not prevent the admission or use of evidence that tends to prove that evidence should not be accepted.

Cross-examination of accused by leave only

90. An accused in criminal proceedings may not be cross-examined as to matters arising out of evidence to which section 88 or 89 applies unless the court gives leave.

*Division 6**Credibility***Exclusion of evidence relevant to credibility**

91.(1) Evidence that relates to the credibility of a witness is not admissible to prove that the evidence of the witness should or should not be accepted.

(2) Where such evidence is relevant otherwise than as mentioned in subsection (1), that subsection does not prevent the use of the evidence to prove that the evidence of the witness should or should not be accepted.

Exception: character of accused

92.(1) This section applies in criminal proceedings.

(2) The hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence adduced by an accused that tends to prove that the accused is either generally or in a particular respect, a person of good character.

(3) Where evidence that tends to prove that the accused is generally a person of good character has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character.

(4) Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character in that respect.

Exception: cross-examination as to credibility

93.(1) The credibility rules does not prevent the admission or use of evidence that relates to the credibility of a witness and that has been adduced in cross-examination of the witness.

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- (2) Evidence referred to in subsection (1) is not admissible if it
- (a) is relevant only to the credibility of the witness; and
 - (b) does not have substantial probative value as to the credibility of the witness.
- (3) In determining whether the evidence referred to in subsection (1) has substantial probative value the court shall have regard to *inter alia*, the following matters
- (a) whether the evidence tends to prove that the witness knowingly or recklessly made a false representation at a time when the witness was under an obligation to tell the truth; and
 - (b) the period that has elapsed since the acts of events to which the evidence relates were done or occurred.

Further protections: cross-examination of accused

94.(1) This section only applies in criminal proceedings in addition to section 93.

- (2) Subject to this section, an accused may not be cross-examined as to a matter that is relevant only to the credibility of the accused unless the court gives leave.
- (3) Leave is not required for cross-examination by the prosecutor as to whether the accused
- (a) is biased or has a motive to be untruthful;
 - (b) was or is unable to be aware of or recall matters to which his or her evidence relates; or
 - (c) has made a prior inconsistent statement.

(4) Leave shall not be given for cross-examination by the prosecutor as to any other matter that is relevant only to the credibility of the accused unless

- (a) evidence has been adduced by the accused that tends to prove that the accused is, either generally or in a particular respect, a person of good character; or
- (b) evidence has been admitted that
 - (i) was given by the accused,
 - (ii) tends to prove that a witness called by the prosecutor has a tendency to be untruthful, and
 - (iii) was adduced solely or mainly to impugn the credibility of that witness.

(5) A reference in subsection (4) to evidence does not include a reference to evidence of conduct

- (a) in the events in relation to which; or
- (b) in relation to the investigation of the offence for which,

the accused is being prosecuted.

(6) Leave shall not be given for cross-examination by some other accused unless the evidence that the accused to be cross-examined has given include evidence adverse to the first-mentioned accused and that evidence has been admitted.

Where unsworn evidence given

95. In criminal proceedings, where an accused has given unsworn evidence only, sections 93 and 94 apply in relation to evidence that is relevant only to the credibility of that accused as if the accused has given sworn evidence and the evidence concerned has been adduced in cross-examination of the accused.

Exception: rebutting denials by other evidence

96.(1) Where evidence that a witness

- (a) is biased or has a motive to be untruthful;
- (b) has been convicted of an offence, including an offence against the law of a foreign country; or
- (c) made a prior inconsistent statement,

is adduced, otherwise than from the witness, the credibility rule does not prevent the admission or use of the evidence if the witness has denied the substance of the evidence.

(2) Where evidence that a witness

- (a) is or was unable to be aware of matters to which his evidence relates; or
- (b) knowingly or recklessly made a false representation while under an obligation imposed by or under a law, including a law of a foreign country, to tell the truth,

is adduced, otherwise than from the witness, the credibility rule does not prevent the admission or use of the evidence if the circumstance set out in subsection (3) exist.

(3) The circumstances referred to in subsection (2) are as follows:

- (a) that the witness has denied the substance of the evidence; and
- (b) that the court has given leave to adduce the evidence.

Exception: application of certain provisions to maker of representations**97.** Where

- (a) by virtue of Division 1, the hearsay rule does not prevent the admission of evidence of a previous representation;
- (b) evidence of the representation has been admitted; and
- (c) the person who made the representation has not been called to give evidence;

the credibility rule does not prevent the admission or use of evidence about matters as to which the person could have been cross-examined if he had given evidence.

Exception: re-establishing credibility

98.(1) The credibility rule does not prevent the admission or use of evidence adduced in re-examination of a witness.

(2) The credibility rule does not prevent the admission or use of evidence that explains or contradicts evidence adduced as mentioned in section 95 or 97, if the court gives leave to adduce that evidence.

(3) Without limiting subsection (1) or (2), where

- (a) evidence of a prior inconsistent statement of a witness has been admitted; or
- (b) it is suggested, either expressly or by implication, that evidence given by the witness has been fabricated or reconstructed, whether deliberately or otherwise or is the result of a suggestion;

the credibility rule does not prevent the admission or use of evidence of a prior consistent statement of the witness if the court gives leave to adduce that evidence.

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Division 7
Identification Evidence

Application of Division

99. This Division applies only in criminal proceedings.

Visual identification evidence excluded unless certain conditions are met

100.(1) Visual identification evidence adduced by the prosecutor is not admissible unless

- (a) an identification parade that included the accused was held before the identification was made;
- (b) it would not have been reasonable to hold such a parade; or
- (c) the accused refused to take part in such a parade

and the identification was made without the person who made the identification having been influenced to identify the accused.

(2) Without limiting subsection (1), in determining whether it was reasonable to hold an identification parade the court shall take into account the following matters:

- (a) the kind of offence, and the gravity of the offence, concerned;
- (b) the importance of the evidence;
- (c) the practicality of holding an identification parade, having regard, among other things,
 - (i) if the accused failed to co-operate in the holding of the parade, to the manner and extent of, and the reason (if any) for, the failure; and

- (ii) in any case, to whether the identification was made at or about the time of the commission of the offence; and
 - (d) the appropriateness of holding an identification parade, having regard, among other things, to the relationship, if any, between the accused and the person who made the identification.
- (3) It shall be presumed that it would not have been reasonable to hold an identification parade if it would have been unfair to the accused for such a parade to be held.
- (4) If
 - (a) the accused refused to take part in an identification parade unless an attorney-at-law acting for the accused or unless another person chosen by the accused was present while it was being held; and
 - (b) there were, at the time when the parade was to be held, reasonable grounds to believe that it was not reasonably practicable for such an attorney-at-law or other person to be present,it shall be presumed that it would not have been reasonable to hold an identification parade at that time.
- (5) In determining whether it was reasonable to hold an identification parade, the court shall not take into account the availability of pictures or photographs that could be used in making identifications.
- (6) In this section,
 - “picture identification evidence” means identification evidence relating to an identification made wholly or partly by the person who made the identification examining pictures kept for the use of police officers;
 - “visual identification evidence” means identification evidence relating to an identification based wholly or partly on what a person saw, but does not include picture identification evidence.

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Exclusion of evidence of identification by pictures

101.(1) This section

- (a) applies in relation to identification evidence adduced by the prosecutor where the identification was made wholly or partly as a result of the person who made the identification examining pictures kept for the use of police officers; and
- (b) applies in addition to section 100.

(2) Where the accused was in the custody of a police officer in connection with the investigation of an offence at the time when the pictures were examined, the identification evidence is not admissible unless

- (a) the picture of the accused that was examined was made after the accused had been taken into that custody; or
- (b) the pictures examined included a reasonable number of pictures of persons who were not, at the time when the pictures were made, in the custody of a police officer in connection with the investigation of an offence,

and the identification was made without the person who made it having been intentionally influenced to make that identification.

(3) In any other case, the identification evidence is not admissible unless the pictures examined included a reasonable number of pictures of persons who were not, at the time when the pictures were made, in the custody of a police officer in connection with the investigation of an offence.

(4) Where the evidence concerning an identification of an accused that was made after examining a picture has been adduced by that accused, the preceding provisions of this section do not render inadmissible evidence adduced by the prosecutor, being evidence that contradicts or qualifies that evidence.

- (5) In this section,
- (a) “picture” includes photograph; and
 - (b) a reference to the making of a picture includes a reference to the taking of a photograph.

Directions to jury

102.(1) Where identification evidence has been admitted, the Judge shall inform the jury that there is a special need for caution before accepting identification evidence and of the reasons for the need for caution, both generally and in the circumstances of the case.

(2) In particular, the Judge shall warn the jury that it should not find, on the basis of the identification evidence, that the accused was a person by whom the relevant offence was committed unless

- (a) there are, in relation to the identification, special circumstances that tend to support the identification; or
- (b) there is substantial evidence, not being identification evidence that tends to prove the guilt of the accused and the jury accepts that evidence.

(3) Special circumstances include

- (a) the accused being known to the person who made the identification; and
- (b) the identification having been made on the basis of a characteristic that is unusual.

(4) Where

- (a) it is not reasonably open to find the accused guilty except on the basis of identification evidence;

- (b) there are no special circumstances of the kind mentioned in subsection (2)(a); and
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- (c) there is no evidence of the kind mentioned in subsection (2)(b),
[2007-44]

the Judge shall direct that the accused be acquitted.

Division 8

Privileges

Client legal privilege

Interpretation

103. In this Division,

“attorney-at-law” includes an employee or agent of an attorney-at-law;

“client” includes

- (a) an employee or agent of a client;
- (b) if the client is a person in respect of whose person, estate or property a manager or committee or other person, however described, is for the time being acting under a law that relates to persons of unsound mind, a person so acting; and
- (c) if the client has died, a personal representative of the client, and, in relation to a confidential communication made by a client in respect of property in which the client had an interest, also includes a successor in title to that interest;

“party” includes

- (a) an employee or agent of a party;

- (b) if the party is a person in respect of whose person, estate or property a manager or committee or other person, however described, is for the time being acting under a law that relates to persons of unsound mind, a person so acting; and
- (c) if the party has died, a personal representative of the party, and, in relation to a confidential communication made by a party in respect of property in which the party had an interest, also includes a successor in title to that interest.

Privilege in respect of legal advice and litigation, etc.

104.(1) Where on objection by a client the court finds that the adducing of evidence would involve the disclosure of

- (a) a confidential communication made between
 - (i) the client and his attorney-at-law;
 - (ii) 2 or more attorneys-at-law for the client; or
 - (iii) employees or agents of such attorneys-at-law; or
- (b) the contents of a document, whether delivered or not, that was prepared by the client or his attorney-at-law,

for the dominant purpose of the attorney-at-law, or of one of the attorneys-at-law, providing legal advice to the client, the court shall direct that the evidence not be adduced.

(2) Where, on objection by a client, the court finds that the adducing of evidence would result in the disclosure of

- (a) a confidential communication between
 - (i) 2 or more of the persons mentioned in subsection (1);
 - (ii) a person referred to in subsection (1) and some other person; or
 - (iii) the employees or agents of the client; or

- (b) the contents of a document, whether delivered or not, that was prepared by the client or his attorney-at-law,

that was made or prepared for the dominant purpose of providing or receiving professional legal services in relation to a legal or administrative proceeding, or an anticipated or pending administrative or legal proceeding, in which the client is or may be a party, the court shall direct that the evidence not be adduced.

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- (3) Where, on objection by a party who is not represented in the proceeding by an attorney-at-law, the court finds that the adducing of evidence will involve the disclosure of

- (a) a confidential communication made between that party and some other person; or
- (b) the contents of a document, whether delivered or not, that has been prepared by that party or at the direction or request of the party,

for the dominant purpose of preparing for or conducting the proceeding, the court shall direct that the evidence not be adduced.

Loss of client legal privilege

105.(1) Section 104 does not prevent the adducing of evidence given with the consent of the client or party concerned.

(2) Section 104 does not prevent the adducing of evidence relevant to a question concerning the intentions or competence in law of a client or party who has died.

(3) Where, if the evidence were not adduced, the court would be prevented, or it could reasonably be expected that the court would be prevented, from enforcing an order of a court, section 104 does not prevent the adducing of the evidence.

(4) In criminal proceedings, section 104 does not prevent an accused from adducing evidence other than evidence of

- (a) a confidential communication between a person who is being prosecuted for a related offence and an attorney-at-law acting for that person in connection with that prosecution; or
- (b) the contents of a document prepared by a person who is being prosecuted for a related offence or by an attorney-at-law acting for that person in connection with that prosecution.

(5) Section 104 does not prevent the adducing of evidence of the making of a communication or document that affects a right of a person.

(6) Where a client or party has voluntarily disclosed the substance or evidence, not being a disclosure made

- (a) in the course of the making of the confidential communication or the preparation of the confidential document;
- (b) as a result of duress or deception; or
- (c) under compulsion of law,

section 104 does not prevent the adducing of the evidence.

(7) Where the communication or document was disclosed by a person who was, at the time, an employee or agent of a client or an attorney-at-law subsection (6) does not apply unless the employee or agent was authorised to make the disclosure.

(8) Where a confidential communication is contained in a document and a witness has used the document as mentioned in section 30(1), section 104 does not prevent the adducing of evidence of the document.

(9) Where the substance of evidence has been disclosed with the express or implied consent of the client or party, section 105 does not prevent the adducing of the evidence.

(10) A disclosure by a client of an attorney-at-law to a person who is a client of the same attorney-at-law shall not be taken to be disclosure for the purposes of subsection (9) if the disclosure concerns a matter in relation to which the attorney-at-law is providing or is to provide professional legal services to both of them.

(11) Where, in relation to a proceeding in connection with a matter, two or more of the parties have, before the commencement of the proceeding, jointly retained an attorney-at-law in relation to the matter, section 105 does not prevent one of those parties who retained the attorney-at-law adducing of evidence of

- (a) a communication made by any one of them to the attorney-at-law; or
- (b) a document prepared by any one of them,

in connection with that matter.

(12) Section 104 does not prevent the adducing of evidence of

- (a) a communication made or a document prepared in furtherance of the commission of
 - (i) an offence, or
 - (ii) an act that renders a person liable to a civil penalty, or
- (b) a communication or a document that the client knew or ought reasonably to have known was made or prepared in furtherance of a deliberate abuse of a power conferred by or under an enactment.

(13) For the purposes of subsection (12), where

- (a) the commission of the offence or act, or the abuse of power, is a fact in issue; and
- (b) there are reasonable grounds for finding that
 - (i) the offence, act or the abuse of power, was committed, and

- (ii) the communication was made or document prepared in furtherance of the commission of the offence, act or the abuse of power,

the court may find that the communication was so made or the document so prepared, respectively.

(14) Where, by virtue of one of the preceding provisions of this section, section 104 does not prevent the adducing of evidence of a communication, that section does not prevent the adducing of evidence of a communication that is reasonably necessary to enable a proper understanding of the first-mentioned communication.

Privilege: Confidential communications and documents

Privilege in respect of confidential communications and document

106.(1) Where, on the application of a person who is an interested person in relation to a confidential communication or a confidential document, the court finds that, if evidence of the communication or document were to be adduced in the proceedings, the likelihood of

- (a) harm to an interested person;
- (b) harm to the relationship in the course of which the confidential communication was made or the confidential document prepared; or
- (c) harm to relationships of the kind concerned,

together with the extent of that harm, outweigh the desirability of admitting the evidence, the court may direct that the evidence not be adduced.

(2) For the purposes of subsection (1) the court shall take into account, *inter alia*, the following matters

- (a) the importance of the evidence in the proceeding;
- (b) if the proceeding is a criminal proceeding, whether the evidence is adduced by the defendant or by the prosecutor;

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- (c) the extent, if any, to which the contents of the communication or document have been disclosed;
 - (d) whether an interested person has consented to the evidence being adduced;
 - (e) the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding; and
 - (f) any means available to limit publication of the evidence.
- (3) Subsection (1) does not apply to a communication or document
- (a) the making of which affects a right of a person;
 - (b) that was made or prepared in furtherance of the commission of
 - (i) an offence,
 - (ii) an act that renders the person liable to a civil penalty, or
 - (c) that an interested person knew or ought reasonably to have known was made or prepared in furtherance of a deliberate abuse of a power conferred by or under an enactment.
- (4) For the purposes of subsection (3), where
- (a) the commission of the offence or act, or the abuse of power, is a fact in issue; and
 - (b) there are reasonable grounds for finding that
 - (i) the offence or act, or the abuse of power, was committed, and
 - (ii) telecommunication was made or document prepared in furtherance of the commission of the offence or act or for that purpose,

the court may find that the communication was so made or the record so prepared, respectively.

(5) In this section, “interested person”, in relation to a confidential communication or a confidential document, means a person by whom, to whom, about whom or on whose behalf the communication was made or the document prepared.

Privilege in respect of self-incrimination in other proceedings

107.(1) Where a witness objects to giving evidence on the ground that the evidence may tend to prove that the witness

- (a) has committed an offence against or arising under a law of or in force in Barbados or the law of a foreign country; or
- (b) is liable to a civil penalty,

the court shall, if there are reasonable grounds for the objection, inform the witness of the matters contained in subsection (2).

(2) The matters referred to in subsection (1) are

- (a) that he need not give the evidence but that, if he gives the evidence, the court will give a certificate under this section; and
- (b) of the effect of the certificate.

(3) Where a witness referred to in subsection (1) declines to give evidence, the court shall not require that witness to give evidence but, if the witness gives the evidence, the court shall cause the witness to be given a certificate under this section in respect of the evidence.

(4) Where a witness objects to giving evidence pursuant to subsection (1) and

- (a) the objection has been overruled; and
- (b) after the evidence has been given, the court finds that there were reasonable grounds for the objection, the court shall cause the witness to be given a certificate in respect of the evidence.

- (5) Evidence in respect of which a certificate under this section has been given is not admissible against the person to whom the certificate was given in any legal or administrative proceedings, not being criminal proceedings in respect of the falsity of the evidence.
- (6) In criminal proceedings, the preceding provisions of this section do not apply in relation to evidence that an accused
- (a) did an act the doing of which is a fact in issue; or
 - (b) had a state of mind the existence of which is a fact in issue.

Evidence excluded in the public interest

Exclusion of evidence of reasons for judicial, etc. decisions

- 108.(1)** Evidence of the reasons for a decision made by a person
- (a) acting as judge, magistrate or like officer in legal or administrative proceedings; or
 - (b) acting as an arbitrator in respect of a dispute that has been submitted to the person, or to the person and one or more other persons, for arbitration,

or the deliberations of a person so acting in relation to such a decision, may not be given by that person, or by a person who was under the direction or control of that person, in a proceeding to which this Act applies that is not the legal or administrative proceedings concerned.

- (2) Subsection (1) does not prevent the admission or use, in legal or administrative proceedings, of published reasons for a decision.
- (3) Evidence of the reasons for a decision made by a member of a jury in legal or administrative proceedings, or of the deliberations of a member of a jury in relation to such a decision, may not be given by any of the members of that jury in a proceeding to which this Act applies that is not the legal or administrative proceedings concerned.

- (4) Subsections (1), (2) and (3) do not apply in proceedings that are
- (a) a prosecution for one or more of the following offences:
 - (i) attempting to pervert the course of justice, perverting the course of justice;
 - (ii) embracery; or
 - (iii) an offence connected with an offence mentioned in subparagraph (i) or (ii), including an offence of conspiring to commit such an offence;
 - (b) in respect of a contempt of a court; or
 - (c) by way of appeal from a judgment, decree, order or sentence of a court.

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Exclusion of evidence of matters of state

109.(1) Where the public interest in admitting evidence that relates to matters of state is outweighed by the public interest in preserving secrecy or confidentiality in relation to the evidence, the court may, either of its own motion or on the application of any person, whether or not a party direct that the evidence not be adduced.

- (2) For the purposes of subsection (1), evidence that relates to matters of state includes evidence
- (a) that relates to
 - (i) the security or defence of Barbados,
 - (ii) international relations, or
 - (iii) the prevention or detection of offences or contraventions of the law,

- (b) which, if adduced
 - (i) would disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of a law, or
 - (ii) would tend to prejudice the proper functioning of government.
- (3) For the purposes of subsection (1), the court shall take into account, *inter alia*, the following matters
 - (a) the importance of the evidence in the proceedings;
 - (b) if the proceedings are criminal proceedings, whether the evidence is adduced by the defendant or by the prosecutor;
 - (c) the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceedings;
 - (d) the likely effect of the evidence being adduced and the means available to limit its publication; and
 - (e) whether the substance of the evidence has already been published.
- (4) For the purposes of subsection (1), the court may inform itself in any manner the court thinks fit.

Exclusion of evidence of settlement negotiations

- 110.(1)** Evidence may not be adduced of
- (a) a communications made
 - (i) between persons in dispute, or
 - (ii) between one or more persons in dispute and a third party, being a communication made in connection with an attempt to negotiate a settlement of the dispute, or

- (b) a document that has been prepared in connection with an attempt to negotiate a settlement of a dispute, whether or not the document has been delivered.
- (2) Subsection (1) does not apply where
 - (a) the persons in dispute consent to the evidence being adduced or, if one of those persons has tendered the communication or document in evidence in some other administrative or legal proceedings, all the other persons so consent;
 - (b) the substance of the evidence has been disclosed with the express or implied consent of all the persons in dispute;
 - (c) the communication or document
 - (i) began an attempt to settle the dispute, and
 - (ii) included a statement to the effect that it was not to be treated as confidential;
 - (d) the communication or document relates to an issue in dispute and the dispute, so far as it relates to that issue, has been settled;
 - (e) the evidence tends to contradict or to qualify evidence that has already been admitted about the course of an attempt to settle the dispute;
 - (f) the making of the communication, or the preparation of the document, affects a right of a person; or
 - (g) the communication was made, or the document prepared, in furtherance of the commission of
 - (i) an offence, or
 - (ii) an act that renders a person liable to a civil penalty; or
 - (h) a party to the dispute knew or ought reasonably to have known that the communication was made, or the document prepared, in furtherance of a deliberate abuse of a power conferred by or under an enactment.

- (3) For the purposes of paragraph (2)(g), where
- (a) the commission of the offence or act is a fact in issue; and
 - (b) there are reasonable grounds for finding that
 - (i) the offence or act was committed, and
 - (ii) a communication was made or document prepared in furtherance of the Commission of the offence or act,

the court may find that the communication was so made or the document so prepared.

- (4) For the purposes of paragraph (2)(h), where
- (a) the abuse of power is a fact in issue; and
 - (b) there are reasonable grounds for finding that a communication was made or document prepared in furtherance of that abuse,

the court may find that the communication was so made or the document so prepared.

- (5) A reference in this section to
- (a) a dispute is a reference to a dispute of a kind in respect of which relief may be given in legal or administrative proceedings;
 - (b) an attempt to negotiate the settlement of a dispute does not include a reference to an attempt to negotiate the settlement of a criminal proceeding or anticipated criminal proceedings; and
 - (c) a party to a dispute includes a reference to an employee or agent of such a party.

*General***Court to inform of rights, etc.**

111. Where it appears to the court that a witness or a party may have grounds for making an application or objection under one of the preceding provisions of this Division, the court shall satisfy itself, if there is a jury, in the absence of the jury, that the witness or party is aware of the effect of that provision.

Court may inspect, etc. documents

112. Where a question arises under this Division in relation to a document, the court may order that the document be produced to it and may inspect the document for the purpose of determining the question.

Certain evidence inadmissible

113. Evidence that, by or under a provision of this Division, may not be adduced or given in a proceeding is not admissible in the proceeding.

*Division 9**Discretion to exclude evidence***General discretion to exclude**

114. Where the probative value of evidence is substantially outweighed by the danger of unfair prejudice or confusion or the danger that the evidence might mislead or cause or result in undue waste of time, the court may refuse to admit the evidence.

Criminal proceedings: discretion to exclude prejudicial evidence

115. In criminal proceedings, where the probative value of evidence adduced by the prosecutor is outweighed by the danger of unfair prejudice to the accused, the court may refuse to admit the evidence.

Discretion to exclude improperly obtained evidence

116.(1) Evidence that was obtained

- (a) improperly or in contravention of a law, or
- (b) in consequence of an impropriety,

shall not be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.

(2) Without limiting subsection (1), where

- (a) a confession was made during or in consequence of questioning; and
- (b) the person conducting the questioning knew or ought reasonably to have known that
 - (i) the doing or omission of an act was likely to impair substantially the ability of the person being questioned to respond rationally to the questioning; or
 - (ii) the making of a false statement was likely to cause the person who was being questioned to make a confession,

but nevertheless, in the course of that questioning, the person conducting the questioning did or omitted to do the act or made the false statement, evidence of the confession, and evidence obtained in consequence of the confession, shall be taken to have been obtained improperly.

(3) For the purposes of subsection (1), the court shall take into account *inter alia* the following matters:

- (a) the probative value of the evidence;
- (b) the importance of the evidence in the proceeding;
- (c) the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding;
- (d) the gravity of the impropriety or contravention;
- (e) whether the impropriety or contravention was deliberate or reckless;
- (f) whether any other proceeding, whether or not in a court, has been or is likely to be taken in relation to the impropriety or contravention;
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- (g) the difficulty, if any, of obtaining the evidence without impropriety or contravention of law.

PART V

OTHER ASPECTS OF PROOF

Division 1

Judicial Notice

Matters of law

117.(1) Proof shall not be required about matters of law, including the provisions and coming into operation, in whole or in part, of

- (a) an Act;

- (b) an instrument of a legislative character, including regulations, statutory rules and by-laws, made or issued under or by authority of such an Act, being an instrument
 - (i) that is required by or under an enactment to be published in the *Gazette*; or
 - (ii) the making or issuing of which is so required to be notified in the *Gazette*.
- (2) The Judge may inform himself about those matters in any manner that the Judge thinks fit.

Matters of common knowledge, etc.

118.(1) Proof shall not be required about knowledge that is not reasonably open to question and is

- (a) common knowledge; or
 - (b) capable of verification by reference to a document the authority of which cannot reasonably be questioned.
- (2) The Judge may acquire knowledge of that kind in any manner that the Judge thinks fit.
- (3) The court, if there is a jury, including the jury, shall take knowledge of that kind into account.
- (4) The Judge shall give a party such opportunity to make submissions and to refer to relevant information, in relation to the acquiring or taking into account of knowledge of that kind as is necessary to ensure that the party is not unfairly prejudiced.

Certain Crown certificates

119. This Division does not exclude the application of the principles and rules of the common law and of equity relating to the effect of a certificate given by or on behalf of the Crown with respect to a matter of international affairs.

*Division 2**Documents***Interpretation**

120.(1) A reference in this Division to a document in question is a reference to a document in to the contents of which it is sought to adduce evidence.

(2) For the purposes of this Division, where a document is not an exact copy of the document in question but is identical to the document in question in all relevant respects, it may be taken to be a copy of the document in question.

“Best evidence” rule abolished

121. The principles and rules of the common law that relate to the mode of proof of the contents of documents are abolished.

Proof of contents of documents

122.(1) A party may adduce evidence of the contents of a document in question

- (a) by tendering the document in question;
- (b) by adducing evidence of an admission made by some other party to the proceeding as to the contents of the document in question;
- (c) by tendering a document that
 - (i) is or purports to be a copy of the document in question, and
 - (ii) has been produced, or purports to have been produced, by a device that reproduces the contents of documents;
- (d) if the document in question is an article or thing by which words are recorded in such a way as to be capable of being reproduced as sound, or in which words are recorded in a code, including shorthand writing, by tendering a document that is or purports to be a transcript of the words;

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- (e) if the document in question is an article or thing on or in which information is stored in such a manner that it cannot be used by the court unless a device is used to retrieve, produce or collate it, by tendering a document that was or purports to have been produced by use of the device;
- (f) by tendering a document that
- (i) forms part of the records of or kept by a business whether or not the business is still in existence, and
 - (ii) purports to be a copy of, or an extract from or a summary of, the document in question, or is or purports to be a copy of such a document; or
- (g) if the document in question is a public document, by tendering a document, that was or purports to have been printed
- (i) by the Government Printer, or
 - (ii) by the authority of the government of a foreign country, and is or purports to be a copy of the document in question.
- (2) Subsection (1) applies in relation to a document in question, whether the document in question is available to the party or not.
- (3) A party may adduce evidence of the contents of a document in question that is unavailable
- (a) by tendering a document that is a copy of, or a faithful extract from or summary of, the document in question; or
 - (b) by adducing oral evidence of the contents of the document in question.

Documents in foreign countries

123. Where the document in question is in a foreign country, paragraph (b), (c), (d), (e) or (f) of subsection (1) of section 122 does not apply unless

- (a) the party who adduces evidence of the contents of the document in question has, not less than 14 days before the day on which the evidence is adduced, served on each other party a copy of the document proposed to be tendered; or
- (b) the court directs that it is to apply.

*Division 3**Facilitation of proof***Evidence produced by machines, processes, etc.**

124.(1) This section applies in relation to a document or thing produced wholly or partly by a device or process.

(2) Where it is reasonably open to find that the device or process is one that, or is of a kind that, if properly used, ordinarily does what the party tendering the document or thing asserts it to have done, it shall be presumed, unless the contrary is proved, that, in producing the document or thing on the occasion in question, the device or process did what that party asserts it to have done.

(3) In the case of a document that is, or was at the time it was produced, part of the records of, or kept for the purposes of, a business, whether or not the business is still in existence, then where the device or process is or was at that time used for the purposes of the business, it shall be presumed, unless the contrary is proved, that on the occasion in question the device or process did what the party adducing the evidence asserts it to have done.

(4) Subsection (3) does not apply in relation to the contents of a document that was produced for the purposes of, or for purposes that included the purposes of, legal or administrative proceedings.

Attestation of documents

125. It is not necessary to adduce the evidence of an attesting witness to a document, not being a testamentary document, to prove that the document was signed or attested as it purports to have been signed or attested.

Bankers books

126.(1) Subject to this section, a copy of any entry in any book or record kept in any financial institution shall in legal proceedings be admitted in evidence as proof, in the absence of evidence to the contrary, of the entry and of the matters, transactions and accounts therein recorded.

(2) A copy of an entry in the book or record described in subsection (1) shall not be admitted in evidence under this section unless it is first proved that the book or record was, at the time of the making of the entry,

- (a) one of the ordinary books or records of the financial institution;
- (b) that the entry was made in the usual and ordinary course of business;
- (c) that the book or record is in the custody or control of the financial institution; and
- (d) that the copy is a true copy thereof.

(3) The proof referred to in subsection (2) may be given by the manager or accountant of the financial institution and may be given orally or by affidavit sworn before the Registrar of the Supreme Court or any officer of the Registration Office of or above the rank of legal assistant.

(4) Where a cheque has been drawn on any financial institution or branch thereof by any person, an affidavit given by the manager or accountant of the

financial institution or branch, stating his position with the financial institution or branch

- (a) that he has made a careful examination and search of the books and records for the purpose of ascertaining whether or not that person has an account with the financial institution or branch; and
- (b) that he has been unable to find such an account, shall be admitted in evidence as proof, in the absence of evidence to the contrary, that that person has no account in the financial institution or branch.

(5) Where evidence is offered by affidavit pursuant to this section, it is not necessary to prove the signature or official character of the person making the affidavit if the official character of that person is set out in the body of the affidavit.

(6) A financial institution or officer of a financial institution is not in any legal proceedings to which the financial institution is not a party compellable to produce any book or record, the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded unless by order of the court made for special cause.

(7) On the application of any party to legal proceedings, the court may order that that party be at liberty to inspect and take copies of any entries in the books or records of a financial institution for the purposes of the legal proceedings.

(8) The person whose account is to be inspected pursuant to subsection (7) shall be notified of the application at least 2 clear days before the hearing thereof, and if it is shown to the satisfaction of the court that he cannot be notified personally, the notice may be given by addressing it to the financial institution.

(9) Nothing in this section shall be construed as prohibiting any search of the premises of a financial institution under the authority of a warrant.

(10) In this section,

“financial institution” has the meaning assigned to it by section 2 of the *Financial Institutions Act*, Cap. 324A;

“legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

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Gazettes, etc.

127.(1) It shall be presumed, unless the contrary is proved, that a document purporting

- (a) to be the *Gazette*; or
- (b) to have been printed by authority of the government of a foreign country,

is what it purports to be, and was published on the day on which it purports to have been published.

(2) Where there is produced to a court

- (a) a copy of *the Gazette*; or
- (b) a document that purports to have been printed by authority of the government of a foreign country,

being a copy or document in which the doing of an act by the Governor-General, or by a person authorised or empowered by law to do the act, is notified or published, it shall be presumed, unless the contrary is proved, that the act was duly done and, if the date on which the act was done appears in the copy or document, that it was done on that date.

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Seals and signatures

128.(1) The presumptions specified in subsection (2) apply where the imprint of a seal appears on a document and purports to be the imprint of

- (a) the Royal Sign Manual and Signet;
- (b) the Public Seal of Barbados;

- (c) the Privy Seal of the United Kingdom;
 - (d) a seal of a foreign country; or
 - (e) the seal of a body, including a court or a tribunal, or a body corporate established by or under Royal Charter or by an Act, or by the law of a foreign country.
- (2) The presumptions referred to in subsection (1) are
- (a) that the imprint is the imprint of the seal of which it purports to be the imprint; and
 - (b) that the document was duly sealed as it purports to have been sealed.
- (3) The presumptions specified in subsection (4) apply where the imprint of a seal appears on a document and purports to be the imprint of the seal of
- (a) the Sovereign or the Governor-General; or
 - (b) a person holding office under the *Constitution* or an Act of the United Kingdom Parliament or the law of a foreign country.
- (4) The presumptions referred to in subsection (3) are
- (a) that the imprint is the imprint of the seal of which it purports to be the imprint; and
 - (b) that the document was duly sealed by the person purporting to seal it acting in his official capacity.
- (5) Where a document purports to have been signed by a person referred to in subsection (3)(a) or (b), it shall be presumed, unless the contrary is proved, that the document was duly signed by that person acting in his official capacity.

Public documents

129. A document that purports to be a copy of, or a faithful extract from, or a summary of, a public document and to have been

- (a) sealed with the seal of a person who, or body that, might reasonably be supposed to have the custody of the public document; or
- (b) certified as such a copy, faithful extract or summary by a person who might reasonably be supposed to have the custody of the public document

shall be presumed, unless the contrary is proved, to be a copy of the public document, or a faithful extract from or a summary of the public document, as the case may be.

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Documents produced from proper custody

130. Where a document that is or purports to be more than 20 years old is produced from proper custody, it shall be presumed, unless the contrary is proved, that the document is the document that it purports to be and, where it purports to have been executed or attested by a person, that it was duly executed or attested by that person.

Labels, etc.

131. Where

- (a) a document has been attached to an object, or writing has been placed on a document or object; or
- (b) the document or writing so attached or placed may reasonably be supposed to have been so attached or placed in the course of a business,

it shall be presumed, unless the contrary is proved, that the ownership or the origin of the object or document is as stated in the document or writing.

Post and telecommunications

132.(1) It shall be presumed, unless the contrary is proved, that a postal article sent by prepaid post addressed to a person at a specified address in Barbados was received at that address in the ordinary course of post after the day on which it was posted.

(2) Where a message has been

(a) sent by means of a telecommunications apparatus; or

(b) delivered to an office of a carrier providing a domestic telecommunications service for transmission by the carrier and any fee payable in respect of that transmission has been paid,

it shall be presumed, unless the contrary is proved, that the message was received by the person to whom it was addressed 24 hours after having been sent or delivered respectively.

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(3) Where a document that has been

(a) received from a carrier providing a domestic telecommunications service; or

(b) produced by a telecommunications apparatus

purports to contain a record of a message transmitted by means of a telecommunications service, it shall be presumed, unless the contrary is proved, that the message was so transmitted, and that it was sent by the person from whom or on whose behalf it purports to have been sent on the date on which, and at the time at which, and from the place from which, it purports to have been sent.

[2007-44]

(4) In this section, “postal article” has the meaning assigned to it by section 2 of the *Post Office Act*, Cap. 27A.

[2007-44]

*Division 3A**Retention of evidence in criminal proceedings***Definition**

132A. For the purposes of this Division, “agent” means a person authorised in writing by the accused to act on his behalf.

[1997-1]

Use of photograph as evidence

132B.(1) Every photograph of a scene or of anything seized by the Police for the purposes of a criminal investigation shall be admitted for use as evidence in a criminal trial.

(2) Subject to subsection (7), a photograph of goods or moveable property shall not be admitted in evidence unless

- (a) the photograph was taken in the presence of the accused or his attorney-at-law or an agent acting on behalf of the accused; or
- (b) a copy of the photograph is signed by the accused or his attorney-at-law or agent acknowledging that the photograph is a true likeness of the thing photographed.

(3) A copy of any photograph which is taken pursuant to subsection (2) shall be served on the accused or his attorney-at-law or agent personally or by registered post within 7 days of its being taken; and the accused or his attorney-at-law or agent may, not later than 7 days after the receipt of the copy of the photograph, object by notice in writing to the photograph being used as evidence.

(4) Where a photograph is offered as evidence in a criminal trial, the production of negatives shall not be required.

(5) Where goods or moveable property have been seized by the Police for the purposes of a criminal investigation, they shall not be retained for use as evidence once photographs have been taken and no objection has been made.

(6) With regard to goods or moveable property referred to in subsection (5), the Commissioner of Police shall

- (a) cause such number of photographs as appears necessary to be taken; and
- (b) where it appears that the goods or property are owned by any person other than the accused, return them to the owner on the written undertaking that he presents them at trial if so required.

[2007-44]

(7) Where a photograph was taken in the absence of the accused, his attorney-at-law or his agent or a copy of the photograph was not signed by the accused, his attorney-at-law or his agent, then, the person who took the photograph shall make a statement certifying that the photograph was taken in the absence of the accused, his attorney-at-law or his agent, or that a copy of the photograph was not signed by the accused, his attorney-at-law or his agent and the reason therefor.

[1997-1]

Use of samples as evidence

132C.(1) A sample

- (a) of a controlled drug within the meaning of section 3(1) of the *Drug Abuse (Prevention and Control) Act*, Cap. 131; or
- (b) of any other substance or forensic material that has been seized or taken from a person for the purposes of a criminal investigation

[2005-3]

shall, subject to section 132D, be admitted as evidence in a criminal trial if the requirements of this section have been complied with in relation to the sample.

(2) A police officer shall, in the presence of the accused and a Justice of the Peace,

- (a) take the sample from the bulk of the controlled drug or other substance of which it is a part and weigh the sample and the substance from which the sample was taken;
- (b) secure the sample in a container that is wrapped and sealed; and
- (c) sign and initial the container;

and the Justice of the Peace shall also sign and initial the container.

(3) Where subsection (2) has been complied with in relation to a sample, the police officer who took the sample shall sign and date a certificate in the form set out in the *Fifth Schedule* (which certificate shall be countersigned and dated by the Justice of the Peace), and shall render the certificate, along with the sample, to the Commissioner of Police.

(4) The Commissioner of Police shall refer the sample to an authorised analyst for analysis; and in this section and sections 132D and 132E “authorised analyst” means a person authorised by the Minister responsible for Health by notice in the *Gazette* to analyse any substance for the purposes of this section.

(5) Where an authorised analyst has made an analysis of a sample referred to him under subsection (4), he shall make and sign a report to the Commissioner of Police

- (a) stating that the sample was referred to him by the Commissioner;
- (b) specifying the nature and the amount of the sample; and
- (c) setting forth the result of his analysis.

[2001-23]

(6) Within 42 days of receipt of a certificate under subsection (3) or of a report under subsection (5), whichever is later, the Commissioner shall serve copies of

the certificate and the report on the accused or his attorney-at-law or his agent either in person or by registered post.

[2007-44]

[2001-23]

Certificate and report under section 132C to be *prima facie* evidence

132D. In any criminal proceeding in which it is desired to use a sample in evidence by virtue of section 132C, the originals of a certificate rendered under subsection (3), and of a report made under subsection (5), of that section relating to the sample shall, without further proof, be *prima facie* evidence of the matters respectively stated in the certificate and the report; and the report shall, without further proof, be *prima facie* evidence of the authorisation of the authorised analyst.

[2001-23]

Commissioner to dispose of bulk

132E. As soon as may be practicable after receiving an authorised analyst's report under section 132C(5) relating to a sample, the Commissioner of Police shall dispose of the remainder of the substance from which the sample was taken by destroying it or otherwise dealing with it as the circumstances may require.

[2001-23]

Sections 132C to 132E to apply for purposes of Cap. 121B

132F. Sections 132C to 132E shall apply with such modifications and adaptations as are required to give effect to the *Forensic Procedures and DNA Identification Act* (Act 2005-3) in respect of the giving of evidence relating to the carrying out of forensic procedures under that Act.

*Division 4**Standard of proof***Civil proceedings: standard of proof**

133.(1) In a civil proceeding, a court shall find the case of a party proved if it is satisfied that the case has been proved on the balance of probabilities.

(2) In determining whether it is satisfied as mentioned in subsection (1), the matters that the court shall take into account include the nature of the cause of action or defence, the nature of the subject-matter of the proceeding and the gravity of the matters alleged.

Criminal proceedings: standard of proof

134.(1) In criminal proceedings, the court shall not find the case of the prosecution proved unless it is satisfied that it has been proved beyond reasonable doubt.

(2) In a criminal proceeding where the burden of proof is on the accused, the court shall find the case of the accused proved if it is satisfied that the case has been proved on the balance of probabilities.

Admissibility of evidence: standard of proof

135.(1) Subject to this Act, in any proceeding the court shall find that the facts necessary for determining

- (a) a question whether evidence should be admitted or not admitted, whether in the exercise of a discretion or not; or
- (b) any other question arising under this Act

have been proved if it is satisfied that they have been proved on the balance of probabilities.

(2) In determining whether it is satisfied as mentioned in subsection (1), the court shall take into account, *inter alia*, the importance of the evidence in the proceedings.

Division 5

Corroboration

Corroboration requirements abolished

136.(1) It is not necessary that evidence on which a party relies be corroborated.

(2) Subsection (1) does not affect the operation of a rule of law that requires corroboration with respect to the offence of perjury or a like or related offence.

(3) Notwithstanding any rule, whether of law or of practice, to the contrary, but subject to the other provisions of this Act and the *Sexual Offences Act*, Cap. 154, where there is a jury, it is not necessary that the Judge

- (a) warn the jury that it is dangerous to act on uncorroborated evidence or give a warning to the same or like effect; or
- (b) give a direction relating to the absence of corroboration.

Division 6

Warnings

Unreliable evidence

137.(1) This section applies in relation to the following kinds of evidence:

- (a) evidence in relation to which Division 1 or 3 of Part IV applies;
- (b) identification evidence;

-
- (c) evidence the reliability of which may be affected by age, ill health, whether physical or mental, injury or the like;
- (d) in criminal proceedings,
- (i) evidence given by a witness called by the prosecutor, being a person who might reasonably be supposed to have been concerned in the events giving rise to the proceeding; or
 - (ii) oral evidence of official questioning of a defendant, where the questioning is recorded in writing that has not been signed or otherwise acknowledged in writing by the defendant;
- (e) in the case of a prosecution for an offence of a sexual nature, evidence given by a victim of the alleged offence;
[2007-44]
- (f) in the case of proceedings against the estate of a deceased person, evidence adduced by or on behalf of a person seeking relief in the proceedings, being evidence about a matter about which the deceased person could, if he were alive, have given evidence;
[2007-44]
- (2) Where there is a jury and a party so requests, the Judge shall, unless there are good reasons for not doing so,
- (a) warn the jury that the evidence may be unreliable;
 - (b) inform the jury of matters that may cause it to be unreliable; and
 - (c) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.
[2007-44]
- (3) It is not necessary that a particular form of words be used in giving the warning or information.
- (4) This section does not affect any other power of the Judge to give a warning to, or to inform, the jury.

PART VI
MISCELLANEOUS

Inferences

138. Where a question arises as to the application of a provision of this Act in relation to a document or thing, the court may

- (a) examine it; and
- (b) draw any reasonable inference from it as well as from other matters from which inferences may properly be drawn.

Proof of certain matters by affidavit, etc.

139.(1) Evidence of a fact that, by virtue of section 50, 51, 52, 55, 60 or 61 or of a provision of Division 2 or 3 of Part V, is to be proved in relation to a document or thing may be given by a person who, at the relevant time or at some later time, had a position of responsibility in relation to the making or keeping of the document or thing.

(2) Notwithstanding Part IV, the evidence may include evidence based on the knowledge and belief of the person who gives it or on information that that person has.

(3) The evidence may be given by affidavit or, in the case of evidence that relates to a public document, by a statement in writing.

(4) An affidavit or statement that includes evidence based on knowledge, information or belief shall set out the source of the knowledge or information or the basis of the belief.

(5) A copy of an affidavit or statement referred to in subsection (3) shall be served on each party a reasonable time before the hearing of the proceeding.

(6) The party who tenders the affidavit or statement shall, if some other party so requests, call the deponent or person who made the statement to give evidence but need not otherwise do so.

Request to produce documents or call witnesses

140.(1) In this section, “request” means a request given by a party to some other party to do one or more of the following

- (a) to produce to the first-mentioned party or to permit that party, adequately and in an appropriate manner, to examine, test or copy the whole or a part of a specified document or thing;
- (b) to call as a witness a specified person believed to be concerned in the production or maintenance of a specified document or thing or a specified person in whose possession a document or thing is believed to be or to have been at any time;
- (c) in relation to a document of the kind referred to in paragraph (c) of the definition of “document” in section 2, to permit the first-mentioned party, adequately and in an appropriate manner, to examine and test the document and the way in which it was produced and has been kept;
- (d) in relation to evidence of a previous representation, to call as a witness the person who made the previous representation;
- (e) in relation to evidence that a person has been convicted of an offence, being evidence to which section 79 (2) applies; to call as a witness a person who gave evidence in the proceeding in which the person was so convicted.

(2) Where, for the purpose of determining a question that relates to

- (a) a previous representation;
- (b) evidence of a conviction of a person for an offence; or
- (c) the authenticity, identity or admissibility of a document or thing,

a party has given a reasonable request to some other party and that other party has, without reasonable cause, failed or refused to comply with the request, the court may make one or more of the orders mentioned in subsection (3).

- (3) The orders referred to in subsection (2) are
- (a) an order directing the other party to comply with the request;
 - (b) an order that the other party produce a specified document or thing, or call as a witness a specified person, as mentioned in subsection (1);
 - (c) such order with respect to adjournments or costs as is just,
- or may refuse to admit the evidence in relation to which the request was made.
- (4) Where the party who has failed to comply with a request proves that the document or thing to be produced or the person to be called is unavailable, it is reasonable cause to fail to comply with the request.
- (5) In relation to the exercise of a power under subsection (2), the court shall take into account, *inter alia*, the following matters
- (a) the importance in the proceedings of the evidence in relation to which the request was made;
 - (b) whether there is a genuine dispute in relation to the matter to which the evidence relates;
 - (c) whether there is a reasonable doubt as to the authenticity or accuracy of the evidence or of the document the contents of which are sought to be proved;
 - (d) whether there is a reasonable doubt as to the authenticity of the document or thing that is sought to be tendered;
 - (e) in the case of a request in relation to evidence of a previous representation, whether there is a reasonable doubt as to the accuracy of the representation or of the information on which it was based;
 - (f) in the case of a request as mentioned in paragraph (1) (e), whether some other person is available to give evidence about the conviction or the facts that were in issue in the proceeding in which the conviction was obtained;

- (g) whether compliance with the request would involve undue expense or delay or would not be reasonably practicable; and
- (h) the nature of the proceeding.

Views, etc.

141.(1) The Judge may, on application, order that a demonstration, experiment or inspection be held.

(2) A Judge shall not make an order under subsection (1) unless he is satisfied that

- (a) the parties will be given a reasonable opportunity to be present; and
- (b) the Judge and, if there is a jury, the jury will be present.

(3) In determining whether to make an order under subsection (1), the matters that the Judge shall take into account include, whether the parties will be present, the matter referred to in section 114 and

- (a) in the case of a demonstration, the extent to which the demonstration will properly reproduce the conduct or event to be demonstrated; and
- (b) in the case of an inspection, the extent to which the place or thing to be inspected has materially altered.

(4) The court, including, if there is a jury, the jury, may not itself conduct an experiment in the course of its deliberations.

(5) The preceding provisions of this section do not apply in relation to the inspection of an exhibit by the court or by the jury.

Views, etc., to be evidence

142. Subject to this Act, the court, including, if there is a jury, the jury, may draw any reasonable inference from what it sees, hears or otherwise notices during a demonstration, experiment or inspection.

The *voir dire*

143.(1) Where the determination of a question whether

- (a) evidence should be admitted, whether in the exercise of a discretion or not; or
- (b) a witness is competent or compellable,

depends on the court finding that a particular fact exists, the question whether that fact exists is, for the purposes of this section, a preliminary question.

(2) Where there is a jury, a preliminary question whether evidence of an admission, or evidence to which section 116 applies, should be admitted shall be heard and determined in the absence of the jury.

(3) Where there is a jury, the jury shall not be present at a hearing to determine any other preliminary question unless the court so orders.

(4) In determining whether to make an order as mentioned in subsection (3), the court shall take into account, *inter alia*, the following matters

- (a) whether the evidence concerned will be adduced in the course of the hearing to determine the preliminary question; and
- (b) whether the evidence to be adduced in the course of that hearing would be admitted if adduced at some other stage of the hearing of the proceeding, other than in some other hearing to determine a preliminary question or, in a criminal proceeding, in relation to sentencing.

(5) Section 107 (6) does not apply in a hearing to determine a preliminary question.

(6) In the application of Parts III and IV in a hearing to determine a preliminary question, the facts in issue shall be taken to include the fact to which the hearing relates.

(7) Where there is a jury and the jury is not present at a hearing to determine a preliminary question, evidence shall not be adduced otherwise in the proceeding

about evidence that a witness gave in that hearing unless that evidence is inconsistent with evidence otherwise given by the witness in the proceeding.

(8) Notwithstanding section 22 (2), a defendant who gives sworn evidence in a hearing to determine a preliminary question is not thereby precluded from giving unsworn evidence otherwise in the proceeding.

Waiver of rules of evidence

144.(1) The court may, if the parties consent, by order dispense with the application of any one or more of the provisions of

- (a) Division 3 of Part II;
- (b) Divisions 1 to 6, inclusive, of Part IV; or
- (c) Division 2 of Part I,

in relation to particular evidence or generally.

(2) In criminal proceedings, the consent of an accused is not effective for the purposes of subsection (1) unless

- (a) the accused is represented by an attorney-at-law; or
- (b) the court is satisfied that the accused understands the consequences of giving the consent.

(3) In civil proceedings, the court may order that anyone or more of the provisions mentioned in subsection (1) do not apply in relation to evidence if

- (a) the matter to which the evidence relates is not genuinely in dispute; or
- (b) the application of those provisions would cause or involve unnecessary expense or delay.

(4) In determining whether to exercise the power conferred by subsection (3), the matters that the court shall take into account include

- (a) the importance of the evidence in the proceeding;

- (b) the nature of the cause of action or defence and the nature of the subject-matter of the proceeding;
- (c) the probative value of the evidence; and
- (d) the powers of the court, if any, to adjourn the hearing, to make some other order or to give a direction in relation to the evidence.

Leave, etc., may be given on terms

145.(1) Where, by virtue of a provision of this Act, a court may give any leave, permission or direction, the leave, permission or direction may be given on such terms as the court thinks fit.

(2) In determining whether to give the leave, permission or direction, the matters that the court shall take into account include

- (a) the extent to which to do so would be likely to add unduly to, or to shorten, the length of the hearing;
- (b) the extent to which to do so would be unfair to a party or to a witness;
- (c) the importance of the evidence in relation to which the leave or permission is sought;
- (d) the nature of the proceeding; and
- (e) the powers, if any, of the court to adjourn the hearing or to make some other order or to give a direction in relation to the evidence.

Additional powers

146.(1) The powers of a court in relation to the discovery or inspection of documents extend to enabling the court to make such orders as the court thinks fit, including orders as to methods of inspection, adjournments and costs, to ensure that the parties to a proceeding can adequately, and in an appropriate manner, inspect documents of the kind referred to in paragraph (c) of the definition of “document” in section 2.

(2) The power of a person or body to make rules of court in relation to the High Court, or Magistrate's Court extends to making rules for or with respect to the discovery of reports of persons intended to be called by a party to give evidence in a proceeding to which this Act applies.

(3) Without limiting subsection (2), rules made under that subsection may provide for the exclusion of evidence if the rules are not complied with, or for its admission on specified terms.

Certifying false copies or extracts

147. Any officer authorised or required by this Act to furnish any certified copies or extracts who wilfully certifies any document to be a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, shall be guilty of an offence and liable upon conviction on indictment to imprisonment for 5 years.

Judges and Commissioners of Probates to take acknowledgements and probates

148.(1) The Judges and the Commissioners of Probates are hereby fully authorised and required to continue to take the acknowledgement of the parties or any of them to any deed or to take probate thereof by one of the witnesses on oath.

(2) Such deed being so proved and recorded in the Registration Office shall, on production thereof, be admissible in evidence in any court.

Proof of exemplifications of wills, etc. from outside Barbados

149. All exemplifications of wills and letters of administration and guardianship, duly authenticated in the usual and customary manner and transmitted hither and allowed of by the Registrar, shall be allowed, deemed and taken as proof of the original will for all necessary legal and equitable purposes in all courts in like manner as if the original will had been transmitted to Barbados

and proved before the High Court and letters of administration and of guardianship had been here granted thereon.

Manner of execution and proof of certain documents

150.(1) Notwithstanding anything in this Act to the contrary, all deeds, wills and other writings and all declarations and affidavits purporting

- (a) to be executed, acknowledged, proved, declared or deposed to in any part of the Commonwealth and where declared or deposed to, then verified on oath before
 - (i) a diplomatic or consular representative for Barbados; or
 - (ii) a Judge of any superior court; or
 - (iii) a Justice of the Peace or Commissioner for Oaths empowered to administer such oath or declaration; or
 - (iv) a mayor of any city or corporation; or
 - (v) a Notary Public;
- (b) to be proved in any foreign country or state and verified on oath before
 - (i) a diplomatic or consular representative for Barbados; or
 - (ii) a Judge of any superior court, certified as such by a diplomatic or consular representative for Barbados; or
 - (iii) a Notary Public, certified as such by a diplomatic or consular representative for Barbados;
- (c) to be executed, acknowledged, declared or deposed to in any foreign country or state and where declared or deposed to then verified on oath before
 - (i) a diplomatic or consular representative for Barbados; or
 - (ii) a Judge of a superior court; or
 - (iii) a Notary Public,

shall be deemed to have been sufficiently executed, acknowledged, proved, declared or deposed to and shall be received as evidence in any court, and judicial notice shall be taken of such deeds, wills and other writings, declarations and affidavits and of any seal or signature, as the case may be, of any person mentioned in this subsection attached, appended or subscribed thereto.

(2) All deeds, wills and other writings and all declarations and affidavits executed, acknowledged, proved, declared, deposed to, verified on oath or certified before a diplomatic or consular representative for Barbados, other than any such representative who is in the public service, shall be deemed to have been properly executed, acknowledged, proved, declared, deposed to, verified on oath or certified.

(3) All deeds, wills and other writings and all declarations and affidavits executed, acknowledged, proved, declared or deposed to in any of the ways provided for in this section on or after the 30th November, 1966 and before the 9th January, 1969,* shall be deemed to have been sufficiently executed, acknowledged, proved, declared, or deposed to and shall be received as evidence in any court and judicial notice shall be taken of such deeds, wills and other writings, declarations and affidavits and of any seal or signature, as the case may be, of any person mentioned in that section attached, appended or subscribed thereto.

**[Being the date of commencement of the Evidence (Amendment) Act, 1968, 1968-53.]*

Section 152 not to limit admissibility of deeds, etc.

151.(1) Nothing in section 152 shall be deemed or taken to render inadmissible as evidence in any court any deed, writing, act or thing which, before the passing of this Act, would have been admissible or of which judicial notice would by law have been taken.

(2) Nothing in section 152 shall be deemed in any wise to affect or extend the law as to acknowledgments made by married women residing out of Barbados.

Comparison of a disputed writing with a genuine writing to be permitted in any trial

152. In any trial, civil or criminal, comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Admissibility of medical certificates and reports

153.(1) Notwithstanding any enactment or law, and subject to the conditions specified in subsection (2), the following documents are admissible in evidence before a court in civil and criminal proceedings

- (a) the certificate or report of a medical practitioner within the meaning of the *Medical Registration Act*, Cap. 371, in respect of any of the following
 - (i) the medical condition of a person;
 - (ii) the nature and extent of any injuries to that person, including the probable effects of the injuries;
 - (iii) the cause of the medical condition or of any of the injuries;
 - (iv) the nature of the instrument, if any, with which any of the injuries were caused;
 - (v) the degree of force that was used; and
 - (vi) any other significant aspects of the injuries; and
- (b) a certificate or report of an analyst or consultant in the field of bacteriology, pathology, radiology or toxicology in respect of his examination or analysis of any matter.

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- (2) The conditions to which subsection (1) refers are that
- (a) the document purports to be signed by the person who made it;
 - (b) the document contains a declaration by the person making it, declaring the facts set out therein to be true to the best of his knowledge and belief and the opinions expressed therein to be honestly held;
 - (c) before the hearing at which the document is to be tendered in evidence
 - (i) a copy thereof is served by or on behalf of the party proposing to tender it on the other parties to the proceedings; and
 - (ii) none of the other parties to the proceedings have, within 7 days from the service of the document, served on the party serving the document, a notice objecting to the document being tendered in evidence.
- (3) Paragraph (c) of subsection (2) does not apply if the parties to the proceedings agree, before or during the hearing, to the tendering of the document.
- (4) Notwithstanding subsection (1), the court may, of its own motion or on application of any party to the proceedings, require a person making a document to be tendered in evidence under this section, to attend before the court and give evidence.
- (5) For the purposes of this section “court” includes an inquest held under the *Coroners Act*, Cap. 113.

Proof of written statement

154.(1) In any criminal proceedings, other than proceedings before an examining magistrate, a written statement by any person is, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, admissible as evidence to the like extent as oral evidence to the like effect by that person.

- (2) The conditions referred to in subsection (1) are
- (a) the statement purports to be signed by the person who made it;
 - (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
 - (c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and
 - (d) none of the other parties or their attorneys-at-law, within 7 days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section.
- (3) The conditions mentioned in paragraphs (c) and (d) of subsection (2) do not apply if the parties agree before or during the hearing that the statement shall be so tendered.
- (4) The following provisions have effect in relation to any written statement tendered in evidence under this section
- (a) if the statement is made by a person under the age of 18, it shall give his age;
 - (b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and
 - (c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under paragraph (c) of subsection (2) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

- (5) Notwithstanding that a written statement made by any person may be admissible as evidence under this section
- (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and
 - (b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.
- (6) An application under paragraph (b) of subsection (5) may be made to the court before the hearing.
- (7) So much of any statement as is admitted in evidence under this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.
- (8) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it has been produced as an exhibit and identified in court by the maker of the statement.

Statement of wages in evidence

155. A statement in writing to the effect that an amount has been paid to a person during any period in respect of his employment, purporting to be signed by or on behalf of his employer, shall be evidence of the facts therein stated in any proceedings taken before a court

- (a) for enforcing payment of a sum adjudged to be paid by conviction or order of the court by the person to whom the amount is stated to have been paid; or
- (b) on any application made by or against that person for the making of a maintenance order or an order enforceable as a maintenance order, or for the variation, revocation, discharge or revival of such an order.

False written statements tendered in evidenced

156.(1) If any person in a written statement tendered in evidence in criminal proceedings under section 132 of the *Magistrate's Court Act*, Cap. 116A or under section 158 of this Act wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he is liable on conviction on indictment to imprisonment of 2 years or a fine or both.

[2007-44]

(2) The *Perjury Act*, Cap. 142 has effect as if this section were contained in that Act.

Interpretation

157. In this Part,

“evidence in support of an alibi” means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

“prescribed period” means the period of 7 days from the end of the proceedings before the examining magistrate.

Notice of alibi

158.(1) On a trial on indictment the accused shall not without leave of the court

- (a) adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi; or
- (b) call any person to give such evidence at the trial unless
 - (i) the notice under paragraph (a) includes the name and address of the witness or, if the name and address is not known to the accused

at the time he gives notice, any information in his possession that might be of material assistance in finding the witness;

- (ii) if the name or the address is not included in that notice, the court is satisfied that the accused, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;
- (iii) if the name and address is not included in that notice but the accused subsequently discovers the name or address or receives other information that might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be; and
- (iv) if the accused is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information that is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(2) The court shall not refuse leave under this section if it appears to the court that the examining magistrate did not inform the accused of the requirements of this section.

(3) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(4) Any notice purporting to be given under this section on behalf of the accused by his attorney-at-law shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(5) A notice under paragraph (a) of subsection (1) shall either be given in court during or at the end of the proceedings before the examining magistrate or be given in writing to the prosecutor within the prescribed period and a notice under paragraph (b) (iii) or (iv) of subsection (1) shall be given in writing to the prosecutor.

(6) A notice required by this section to be given to the prosecutor may be given by delivering it to him, or by leaving it at his office, or by sending it in a registered letter addressed to him at his office.

Examination of witnesses upon interrogatories or otherwise

159. It shall be lawful for the High Court in every action depending in the High Court, upon the application of any of the parties to such suit, to order the examination on oath, upon interrogatories or otherwise, before the Registrar or other person or persons to be named in such order, of any witnesses within the jurisdiction of the High Court, or to order a commission to issue for the examination of witnesses on oath at any place or places out of such jurisdiction by interrogatories or otherwise, and by the same or any subsequent order to give all such directions touching the time, place and manner of such examinations as well within the jurisdiction of the High Court as without an all matters and circumstances connected with such examination as may appear reasonable and just.

Attendance of witnesses and production of documents

160.(1) Where any order is made for the examination of witnesses within the jurisdiction of the High Court by authority of this Act, it shall be lawful for the court in and by the first order to be made in the matter or any subsequent order, to command the attendance of any person to be named in such order for the purpose of being examined or the production of any writings or other documents to be mentioned in such order, and to direct the attendance of any such person to be at his own place of abode or elsewhere if necessary or convenient so to do.

(2) Wilful disobedience of any such order shall be deemed contempt of court, and proceedings may be therefore had by an attachment if, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, is served together with or after the service of such order.

(3) Every person whose attendance is so required shall be entitled to the like conduct-money and payment for expenses and loss of time as upon attendance at a trial.

(4) No person shall be compelled to produce under any such order any writing or other document that he would not be compelled to produce at a trial of the cause.

Prisoners may be taken for examination by writ of *habeas corpus*

161.(1) It shall be lawful for the magistrate, gaoler or other officer having the custody of any prisoner, to take such prisoner for examination under the authority of this Act, by virtue of a writ of *habeas corpus* to be issue for that purpose.

(2) The writ shall and may be issued by the High Court or a Judge under such circumstances and in such manner as the High Court or a Judge may now issue the writ commonly called a writ of *habeas corpus ad testificandum*.

Special reports by persons taking examination

162.(1) It shall be lawful for the Registrar or any other person named in any order made under section 161, and he and they are hereby required, to make, if need be, a special report to the High Court touching the examination and the conduct or absence of any witness or other person there or relating thereto.

(2) The court is hereby authorised to institute such proceedings and make such order or upon such report as justice may require and as may be instituted and made in any case of contempt of the High Court.

Costs

163. The costs of every order made for the examination of witnesses under any commission or otherwise by virtue of this Act and of the proceedings thereupon shall be costs in the cause, unless otherwise directed by the High Court.

Admissibility of examinations at trial

164.(1) Subject to subsection (2), no examination or deposition taken by virtue of this Act shall be read in evidence at any trial without the consent of the party against whom the same may be offered.

(2) Where it appears to the satisfaction of the Judge that the examinant or deponent is beyond the jurisdiction of the High Court or is dead or is unable from permanent sickness or other permanent infirmity to attend the trial, the examinations and depositions certified under the hand of the Commissioners, Registrar or other persons taking the same shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

In actions for debt account or lands in Barbados, matters may be proved by declaration in any part of Commonwealth

165.(1) In any action or suit in any court for or relating to any debt or account or for or relating to any lands, tenements or hereditaments or other property situate, lying and being in Barbados, it shall be lawful for the plaintiff and defendant, and also for any witness residing in any part of the Commonwealth, who is to be examined or made use of in such action or suit, to verify or prove any matter or thing relating thereto by solemn declaration in writing in the form in the *Fourth Schedule* made before any Justice of the Peace, Notary Public or other officer authorised by the law of the part of the Commonwealth where such declaration is made to administer an oath, and certified and transmitted, subject to subsection (2), under the signature and seal of any such Justice, Notary Public, or other officer.

(2) Any Justice of the Peace or such other officer who has no seal of office shall in writing either above or before his signature state that he has no seal of office.

(3) In every such declaration there shall be expressed the addition of the party making such declaration and the particular place of his or her abode.

(4) Every declaration so made, certified and transmitted shall in all such actions and suits be allowed to be of the same force and effect as if the person making the same had appeared and sworn or affirmed the matters contained in such declaration *viva voce* in open court or upon a commission issued for the examination of witnesses or of any party in such action or suit and all courts shall take judicial notice of the seal and signature, as the case may be, of any such Justice of the Peace, Notary Public or other officer attached and subscribed to such declaration.

Debts to Crown may be proved in the same manner

166. In any action or suit in any court by or on behalf of the Crown for or relating to any debt or account, the Crown shall and may prove its debts and accounts and examine its witnesses by declaration in like manner as any person may do under section 165.

Judges, etc. empowered to administer oath or affirmation

167. Every court, Judge, Justice, officer, commissioner, arbitrator or other person having by law or by consent of parties authority to hear, receive and examine evidence is hereby empowered to administer an oath or affirmation to all such witnesses as are legally called before them.

Act binds Crown

168. This Act binds the Crown.

Regulations

169. The Attorney-General may make regulations prescribing matters

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed,

for carrying out or giving effect to this Act.

Codes of practice

- 170.** The Attorney-General may make codes of practice respecting
- (a) the exercise by police officers of statutory powers
 - (i) to search a person without first arresting him; or
 - (ii) to search a vehicle without making an arrest;
 - (b) the detention, treatment, questioning and identification of persons by police officers;
 - (c) searches of premises by police officers; and
 - (d) the seizure of property found by police officers on persons or premises.

Repeal. Ch. 6, W.I.F.

171. The *Evidence Act*, 1958, Chapter 6 of the Parliament of the West Indies Federation shall cease to have effect in Barbados.

Transitional

172. This Act does not apply to or in relation to a proceeding in a court the hearing of which commenced before the 1st September, 1994, and any such proceeding may be continued or completed as if this Act had not been passed.

FIRST SCHEDULE*(Section 19(11))**Enactments*

Married Women Act	Cap. 219
Minor Offences Act	Cap. 137
Offences Against the Person Act	Cap. 141
Prevention of Cruelty to Children Act	Cap. 145
Sexual Offences Act	Cap. 154

[2007-44]

SECOND SCHEDULE*(Section 21(1))**Oaths by witnesses*

I swear by Almighty God (or the person to be sworn may name a god recognized by his religion) that the evidence I shall give will be the truth, the whole truth and nothing but the truth.

Oaths by interpreters

I swear by Almighty God (or the person to be sworn may name a god recognized by his religion) that I will and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.

Affirmations by witnesses

I solemnly and sincerely declare and affirm that the evidence I shall give will be the truth, the whole truth and nothing but the truth.

Affirmations by interpreters

I solemnly and sincerely declare and affirm that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.

THIRD SCHEDULE*(Section 72)**Form of Explanation under section 72(2)(v)*

[This Schedule is not in force. S.I. 1994/76]

When you were interviewed by.....I/we made a record in writing of what you said, and what we said to you, in the interview. I/We made the record *at the time of the interview/* as soon as practicable after the interview. It is in *English/*the language that you used in the interview. I/We will give you a copy.

**[Delete whichever is not applicable.]*

**[Delete whichever is not applicable.]*

**[Delete whichever is not applicable.]*

**[Delete whichever is not applicable.]*

I am now going to read it to you in the.....language that you used in the interview.

You can interrupt the reading at any time if you think there is something wrong with the record. At the end of the reading you can tell me/us about anything else you think is wrong with the record, as well as the things you mentioned during the reading.

I/We will make a tape recording of reading the record and everything you say, or I/we say to you, during the reading and at the end. I/We will give you a copy of that tape recording and, if a transcript is made, a copy of that transcript.

FOURTH SCHEDULE*(Section 165)*

I, A.B., do solemnly and sincerely declare that _____ ; and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Evidence Act*.

(Signed)

Taken this _____ day of _____, _____ before me

(Justice of the Peace, Notary Public, Officer authorised by law to administer oaths, as the case may be).

FIFTH SCHEDULE*(Section 132C(3))***CERTIFICATE OF SAMPLING OF SEIZED SUBSTANCE**

I HEREBY CERTIFY that on the _____ day of

 20_____, I took a sample of _____ from the
 bulk and that the bulk was weighed, and the sample was taken and weighed, in
 the presence of _____

(Name of Justice of the Peace)

Weight of bulk _____ gms/kgs.

Weight of sample _____ gms/kgs.

Name and Rank _____

Signature _____

Police Officer

Date _____

The above sampling was done, and this Certificate was signed, before me:

Name _____

Signature _____

Justice of the Peace

Date _____

[2001-23]